

IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT
OF THE RUSSIAN FEDERATION

Judgment
of 27 April 2001 No. 7-II

in the case concerning the review of the constitutionality of certain provisions of the Customs Code of the Russian Federation upon a request of the Arbitration Court of Saint Petersburg and the Leningrad Region and in connection with complaints of the AvtoVAZ OJSC and the Kombinat Severonikel OJSC, the Vernost LLC, the Vita-Plus LLC and the Nevsko-Baltiyskaya Transportnaya Kompaniya LLC, the joint Russian – South African Venture Ekont LLP, and A. D. Chulkov.

Moscow, 27 April 2001

The Constitutional Court of the Russian Federation composed of President M. V. Baglay and Judges N. S. Bondar, N. V. Vitruk, G. A. Gadzhiev, Yu. M. Danilov, L. M. Zharkova, G. A. Zhilin, V. D. Zorkin, A. L. Kononov, V. O. Luchin, T. G. Morshchakova, N. V. Seleznev, A. Ya. Sliva, V. G. Strekozov, O. S. Khokhryakova, B. S. Ebzeev, V. G. Yaroslavtsev,

in the attendance of R. A. Abdrashikov, attorney, and V. A. Yakushin, PhD in Law, representatives of the AvtoVAZ OJSC, R. I. Akhmetshin, PhD in Law, S. G. Pepelyaev, PhD in Law, representatives of the Kombinat Severonikel OJSC, M. V. Sokhach, attorney, representative of A. D. Chulkov, and the Vernost LLC, M. V. Savenkov, President of the Vita-Plus LLC as its representative, B. N. Karkhu, attorney, and V. I. Volkov, President of the Nevsko-Baltiyskaya Transportnaya Kompaniya LLC, as its representatives, A. V. Bryzgalin, PhD in Law, and Y. P. Kutemov, President of the Joint Russian – South African Venture Ekont LLP as its representatives; Permanent Representative of the State Duma to the Constitutional Court of the Russian Federation V. V. Lazarev, Representative of the Council of the Federation M. V. Stepanenko, PhD in Law,

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

in an open hearing, examined the constitutionality of certain provisions of the Customs Code of the Russian Federation.

The reason for the consideration of the case is a request of the Arbitration Court of Saint Petersburg and the Leningrad Region and constitutional complaints of the AvtoVAZ OJSC and the Kombinat Severonikel OJSC, the Vernost LLC, the Vita-Plus LLC and the Nevsko-Baltiyskaya Transportnaya Kompaniya LLC, the Joint Russian – South African Venture Ekont LLP and A. D. Chulkov, the Kombinat Severonikel OJSC, which exercises entrepreneurial activities without forming a legal person. The request and the complaints challenge the constitutionality of certain provisions of Article 24, Section 6, Article 231 in conjunction with Article 230, Subsection 6, Article 291 and paragraph 4, Article 320, and Section 2, Article 247, Article 273 and Section 1, Article 279 of the Customs Code of the Russian Federation.

Insofar as the request and 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.

Having heard the report of Judges-Rapporteurs N. S. Bondar and G. A. Zhilin, statements by the parties’ representatives, the expert opinions of B. I. Puginsky, PhD in Law, and D. I. Cherkayev, PhD in Law, interventions by the representatives invited to the hearing: A.I. Chistyakov, Judge of the Supreme Arbitration Court of the Russian Federation for the Supreme Arbitration Court of the Russian Federation, G. V. Balandina and V. N. Novikov for the State Customs Committee of the Russian Federation, N. G. Khilkov for the Office of the Prosecutor General 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. The AvtoVAZ OJSC and the Kombinat Severonikel OJSC, the Vernost LLC, the Joint Russian – South African Venture Ekont LLP and A. D. Chulkov, who exercises entrepreneurial activities without forming a legal person, contest the constitutionality of Section 6, Article 231 of the Customs Code of the Russian Federation according to which, enterprises, institutions, organizations and individuals exercising entrepreneurial activities without forming a legal person may be held liable for a customs rules violation unless an offence occurs as a result of *force majeure*.

In addition, the Vernost LLC requests to review the constitutionality of Article 230, Subsection 6, Article 291, and Article 320 (4) of the Customs Code of the Russian Federation; the AvtoVAZ OJSC requests to review the constitutionality of the provisions of Article 320 (4) of the Customs Code of the Russian Federation; and A. D. Chulkov requests to review the constitutionality of Article 230 of the Customs Code of the Russian Federation. In their opinion,

the norms of the mentioned provisions prove unconstitutionality of Section 6, Article 231 of the Customs Code of the Russian Federation. Namely, (a) Article 230 recognizes unlawful action or inaction as a customs rules violation without qualifying it as a guilty action or inaction; (b) Subsection 6, Article 291, recognizes only the commission of an offence as a result of *force majeure* to be a circumstance precluding proceedings on the case of customs rules violation by an enterprise, institution, organization or a individual exercising entrepreneurial activities without forming a legal person; (c) Paragraph 4, Article 320 stipulates that during the proceedings concerning customs rules violation by an enterprise, institution, organization or an individual exercising entrepreneurial activities without forming a legal person, the fact of an offence itself shall be proven, while for individuals and officials it is necessary to establish guilt.

The mentioned provisions were applied in holding the applicants liable for customs rules violations: (a) the Joint Russian – South African Venture Ekont LLP, for false declaration of exported copper concentrate (Article 279 of the Customs Code of the Russian Federation), which occurred due to incorrect data entered in the certificate of chemical composition concerning precious metals content and expert's report; b) the AvtoVAZ OJSC, the Vernost LLC, and A. D. Chulkov, who exercises entrepreneurial activities without forming a legal person, for untimely transfer of foreign currency export revenues to the account in an authorized bank (Article 273 of the Customs Code of the Russian Federation), which, for the AvtoVAZ OJSC and A. D. Chulkov, was caused by a foreign party's breach of the contract; and for the Vernost LLC, by amendments to the legislation imposing shorter time limits for transfer of foreign currency export revenues than those stipulated by the contract; (c) the Kombinat Severonikel OJSC, for actions aimed at unlawful evasion or reduction of the customs payments by declaring false information in the customs declaration (Article 282 of the Customs Code of the Russian Federation), which occurred due to amendment of legal acts regulating customs relations, which the applicant (as it claims) did not know and could not know about.

In the applicants' opinion, the mentioned provisions, which permit to hold liable enterprises, institutions, organizations and individuals exercising entrepreneurial activities without forming a legal person for customs rules violation without proving their guilt, violate the principles of fairness (Articles 1 and 7), equality of individuals and legal persons (Article 19 (Section 1), proportionality of responsibility (Section 3, Article 55), presumption of innocence (Article 49), the right of property (Articles 8 and 35) and the right to entrepreneurial activities (Article 34) guaranteed by the Constitution of the Russian Federation.

1.1. Assessment of the constitutionality of Section 6, Article 231 in conjunction with Article 230, Subsection 6, Article 291, and Paragraph 4, Article 320 of the Customs Code of the Russian Federation, requires determination of their constitutional meaning on the basis of

general principles of legal responsibility under the Constitution of the Russian Federation, which are essentially fundamentals of the legal order and directly affect the constitutional status of individuals and legal persons in the Russian Federation (Articles 49, 50, 54 and 64).

As follows from Article 54 (Section 2) of the Constitution of the Russian Federation, legal responsibility is entailed only by actions which are considered by the law in force as offences at the time of the commission of the offence. Thus, the presence of *corpus delicti* is a necessary precondition for all kinds of legal responsibility; the elements of the offence (most importantly in public law relations) and the content of specific *corpus delicti* shall be consistent with the constitutional principles of a democratic rule of law state, including the requirement of fairness in relations between the state and individuals and legal persons held legally responsible. These principles are applicable to customs rules violation.

Under Subsection 2, Article 291 of the Customs Code of the Russian Federation, if a *corpus delicti* of customs offence is absent, the proceedings on the case concerning a customs rules violation may not be initiated and if initiated they must be terminated. Under Subsection 1 of this Article, the absence of a customs offence event is the ground for relief of responsibility. Under these provisions of Article 291 taken in conjunction and considering that they equally apply to all participants in customs relations, the sole fact of violation may not be a ground for imposing liability for customs rules violation on legal persons and individuals who exercise entrepreneurial activity without forming a legal person.

Under the general notion of *corpus delicti* guilt is one of the grounds of responsibility unless otherwise is prescribed by law. The respective legal opinion was expressed by the Constitutional Court of the Russian Federation in the Judgment of 25 January 2001 in the case concerning the review of the constitutionality of Subsection 2, Article 1070 of the Civil Code of the Russian Federation. The absence of guilt in customs rules violation is one of the circumstances precluding proceedings in the case concerning this violation, since it proves the absence of *corpus delicti* of the offence. The same approach underlies the provisions of Section 6, Article 231, Article 230, Subsection 6 of Article 291, paragraph 4, Article 320 of the Customs Code of the Russian Federation applied in systemic unity with Chapter 39 of the Customs Code of the Russian Federation, and defines the kinds of customs offences and responsibility for them.

Any other interpretation of customs offence's *corpus delicti* as a ground of responsibility would contradict the nature of administration of justice. A court which ensures protection of the rights and freedoms of individuals and legal persons held responsible for customs offences, and relies on the principles of equality of the parties and adversariness (Article 123 of the Constitution of the Russian Federation), shall not limit itself to formal ascertainment of the fact

of customs rules violation without any determination of other relevant circumstances, including the presence or absence of guilt (regardless of its form and allocation of the burden of proof).

In the domain of criminal responsibility the Constitution of the Russian Federation establishes the presumption of innocence in Article 49, i.e. it allocates the burden of proof regarding the commission of an offence with the respective bodies of state power. The legislator regulating other types of legal responsibility is entitled to allocate the burden of proof in other manner, giving regard to specificities of the respective relations and their participants (in particular, enterprises, institutions, organizations and individuals exercising entrepreneurial activities without forming a legal person), respecting the requirement of legal responsibility being inevitable and securing the interests of protecting the fundamentals of the constitutional order, morals, health, rights and freedoms of others, ensuring defense of the country and security of the state (Article 15 (Section 2); Article 55 (Section 3) of the Constitution of the Russian Federation).

In allocating the burden of proof, the legislator is entitled to relieve bodies of state power of it and permitting the alleged offenders to prove their innocence, provided that the elements of a specific customs offence do not require otherwise. Within the meaning of the challenged provisions of the Customs Code of the Russian Federation, enterprises, institutions, organizations and individuals exercising entrepreneurial activities without forming a legal person shall not be deprived of a possibility to prove that a customs rules violation was the result of extraordinary circumstances, objectively impossible to overcome, and other unforeseen, impossible to overcome impediments which are beyond the control of the participants in the customs relations, provided that they used all reasonable efforts and acted with an appropriate degree of due care and discretion necessary for the performance of their customs obligations.

Such regulation concerning the content and burden of proof of participants in the relations of international exchange of goods, services, information and results of intellectual activities may be found in a number of international instruments ratified by the Russian Federation, which are an integral part of its legal system under Section 4, Article 15 of the Constitution of the Russian Federation. The UN Convention on Contracts for the International Sale of Goods of 11 April 1980 stipulates that “a party is not liable for a failure to perform any of his obligations if he proves that the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences” (Subsection 1, Article 79).

Certain other international instruments permit the imposition of negative consequences of customs rules violation on persons whose guilt does not have to be proved by state bodies,

provided he has a possibility to prove his innocence (Article 16 of the Convention for the Unification of Certain Rules Relating to International Carriage by Air of 12 October 1929; Article 11 of the Convention on the Contract for the International Carriage of Goods by Road of 19 May 1956; standards 5.2 and 5.3 of the Annex to the Convention on Facilitation of International Maritime Traffic of 9 April 1965). A possibility to relieve state bodies of the burden of proof concerning the guilt of a person who violated the customs rules is further stipulated by Standard 25 of Annex H to the International Convention on the Simplification and Harmonization of Customs Procedures of 1973 (as amended by Protocol of Amendment of 26 June 1999), not ratified by the Russian Federation, which reflects the tendency and scope of respective legislative regulation in many countries.

In its customs legislation, the Russian Federation may not ignore these approaches since the interests of protection of the economic basis of sovereignty require observance of the principle of unity and reciprocity, according to which the state may not put itself in unfavourable legal conditions of the customs regime as compared to other countries. This legal opinion was expressed by the Constitutional Court of the Russian Federation in the Judgment of 14 May 1999 in the case concerning the review of the constitutionality of Section 1, Article 131, and Section 1, Article 380 of the Customs Code of the Russian Federation.

Public customs relations in transportation of goods across the customs border are closely linked to property relations of foreign and Russian counterparts under an obligation to comply with the customs rules. The performance of customs obligations, which are essentially public law obligations, in many respects depends on the performance of the property obligations of respective counterparts.

A legal possibility for participants in customs relations to prove their innocence corresponds to their ability to take measures ensuring performance of obligations by their counterparts in order not to be devoid of the ability to perform public (customs) obligations, which may not be ensured to a lesser degree than the performance of obligations in property relations. A participant in customs relations has a duty to duly choose a counterpart and to ensure the counterparty's performance of obligations by all lawful means; he is responsible for failure to perform public obligations, *inter alia* due to the counterparty's actions or inaction. However, nothing precludes subsequent restoration of the property rights of the participant in customs relations held liable by lodging a civil action against the counterpart whose actions (inaction) resulted in the imposition of the penalty.

1.2. Section 6, Article 231, Article 230, Subsection 6, Article 291, and Paragraph 4, Article 320 of the Customs Code of the Russian Federation, stipulate the grounds and conditions of imposing responsibility for customs offences on enterprises, institutions, organization and

individuals exercising entrepreneurial activities without forming a legal person; however these norms are not applicable to individuals. Such regulation does not violate the principle of equality before the law and court (Sections 1 and 2, Article 19 of the Constitution of the Russian Federation) which guarantees equality of the rights and freedoms of individuals within the same category of persons and does not exclude the possibility of diverging conditions of responsibility for different categories of persons (in the present case, legal entities and individuals exercising entrepreneurial activities without forming a legal person for one part and individuals for the other). However, these differences may not be arbitrary and shall rely on the objective characteristics of the respective categories of persons.

A founding associate entitles an enterprise, institution and organization to participate in economic activities subject to customs obligations and imposes on them risks related to such activities, including risks of responsibility. An individual who becomes an entrepreneur without forming a legal person acquires new powers in addition to the common status of all citizens, which allow him to engage in an activity aimed at gaining profit. He also accepts risks and potential restrictions related to this activity and he has to bear additional burdens. That is why these provisions of the Customs Code of the Russian Federation are equally applicable to all persons falling within the same special category, namely, legal persons and individuals engaged in gainful activities without forming a legal person. Accordingly, these provisions conform to the principle of equality before the law.

1.3. Thus, Section 6, Article 231, in conjunction with Article 230, Subsection 6, Article 291, and Paragraph 4, Article 320 of the Customs Code of the Russian Federation, to the extent that they concern the responsibility of enterprises, institutions, organization and individuals exercising entrepreneurial activities without forming a legal person for customs rules violations conform to the Constitution of the Russian Federation. These provisions do not preclude the possibility for participants in customs relations to prove that a customs rules violation was a result of extraordinary circumstances, objectively impossible to overcome, and other unforeseen impediments, impossible to overcome, which are beyond the control of the participants in customs relations, provided that they used all reasonable efforts and acted with an appropriate degree of due care and discretion necessary for the performance of their customs obligations.

Pursuant to Article 6 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the constitutional meaning of the mentioned provisions of the Customs Code of the Russian Federation revealed in the present Judgment is generally binding on all law-enforcement officials. It precludes the current practice of courts and customs authorities which

refuse to examine exculpatory evidence submitted by legal persons and individuals exercising entrepreneurial activities\y without forming a legal person.

2. The Vita-Plus LLC and A. D. Chulkov who exercises entrepreneurial activities without forming a legal person, under Article 273 of the Customs Code of the Russian Federation were held responsible for violation of the customs regime for “export of goods” by untimely transfer of foreign currency export revenues to the account in an authorized bank. They were fined in the amount of 1 percent and 10 percent of the export revenues, respectively.

In their constitutional complaints, the applicants challenge the constitutionality of Article 273 of the Customs Code of the Russian Federation, imposing responsibility for violation of restrictions, requirements and conditions of the customs regime not prescribed by other articles of Chapter 39 of the Code. In the applicants’ opinion, the imperatives of the mentioned Article do not establish precise grounds of responsibility, and its sanction is disproportionate to the nature and degree of the social danger of the offence. Therefore, it does not conform to the Constitution of the Russian Federation and its Articles 8 (Section 1), 34 (Section 1), 35 (Section 1) and 55 (Section 3).

The Vita-Plus LLC also challenges the constitutionality of Article 24 of the Customs Code of the Russian Federation, which stipulates that the Government of the Russian Federation and the State Customs Committee of the Russian Federation acting within their competence may determine specifics of customs regimes and introduce customs regimes not prescribed by the Code until the adoption of respective legislative acts of the Russian Federation and provided that the Customs Code does not contain specific norms which regulate enforcement of the customs regimes.

The applicant claims that Article 24 of the Customs Code of the Russian Federation permits to broaden the scope of *corpus delicti* of customs offences related to customs regimes (as defined by Article 273) by adopting secondary normative acts of federal executive bodies of state power. This approach contradicts Articles 34 (Section 1), 35 (Section 1) and 55 (Section 3) of the Constitution of the Russian Federation.

2.1. As follows from Subsection 16, Article 10, Article 22, 108 and 198–200 of the Customs Code of the Russian Federation, transport of foreign currency export revenues across the customs border of the Russian Federation is regulated by the customs regime of “export of goods”, which is established by Subsection 12, Article 23 of the Customs Code of the Russian Federation; transport of foreign currency and other currency assets across the customs border shall be performed in compliance with the currency legislation of the Russian Federation. In these cases currency control is exercised by the customs authorities within their competence.

The Law of the Russian Federation “On Currency Regulation and Currency Control” (as amended on 5 July 1999) imposes an obligation on exporters to transfer, within the prescribed time limit, foreign currency export revenues to the account in an authorized bank (Subsection 9 (a), Article 9, Subsections 1 and 3, Article 5). This provision is developed in Decree of the State Customs Committee of the Russian Federation No. 467, “On the Application of the Legal Norm Stipulated by Article 273 of the Customs Code of the Russian Federation” of 24 July 1995 and Decree of the President of the Russian Federation No. 1209, “On State Regulation of Foreign-Trade Barter Contracts” of 18 August 1996, according to which the exporters’ obligation to transfer foreign currency export revenues to the account in an authorized bank is one of the requirements of the “export of goods” customs regime established by Article 98 of the Customs Code of the Russian Federation.

This clarification does not establish a new customs regime which is not foreseen by the Customs Code of the Russian Federation, and it does not contain any new requirements for the “export of goods” regime. Consequently, the exporters’ obligation to transfer foreign currency export revenues to the account in an authorized bank within certain time limits is imposed not by a secondary normative act of federal executive body of state power, but by the Customs Code of the Russian Federation. Failure to respect the mentioned obligation triggers responsibility for violation of the “export of goods” customs regime under Article 273 of the Customs Code of the Russian Federation in systemic unity with the norms of the Law of the Russian Federation “On Currency Regulation and Currency Control”.

Thus, Article 24 of the Customs Code of the Russian Federation did not form a part of the normative basis for holding liable the Vita-Plus LLC and A. D. Chulkov who exercised entrepreneurial activities without forming a legal person, for untimely transfer of foreign currency export revenues to the account in an authorized bank. Consequently, Article 273, which was the normative basis of the applicants’ responsibility, may not be considered as violating their rights and freedoms.

2.2. The sanction of Article 273 of the Customs Code of the Russian Federation stipulates responsibility in the form of a fine of not less than 100 percent and not more than 200 percent of the value of goods and vehicles which were the direct objects of the offence, with or without (a) forfeiture of the objects, (b) recovery of the value equal to the value of these goods and vehicles, or (c) recall of the license or qualification certificate.

Pursuant to Article 71 (Subsection “g”) of the Constitution of the Russian Federation, the competence of the Russian Federation includes currency and customs regulation. The federal legislator determines the grounds, types and measures of responsibility for customs and currency rules violation giving regard to the need to protect the Russian market, stimulate the

development of the national economy, ensure the most efficient use of customs control instruments and exchange of goods instruments within the customs territory, i.e. implementation of the economic policy goals of the Russian Federation.

The choice of a certain measure of punishment proportionate to actions (inaction) is the task of law-enforcement officials who are obliged to consider all circumstances of the case, including the nature and degree of social danger of the action (inaction). The customs authorities were guided precisely by these principles when they imposed, on the Vita-Plus LLC and A. D. Chulkov who exercises entrepreneurial activities without forming a legal person, a fine equal to 1 percent and 10 percent of foreign currency export revenues, respectively.

Thus, the sanction of Article 273 of the Customs Code of the Russian Federation may not be considered as violating the constitutional rights and freedoms. And review of the imposition of specific measures of responsibility on the applicants is outside the competence of the Constitutional Court of the Russian Federation under Article 125 of the Constitution of the Russian Federation and Article 3 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”.

Therefore, the proceedings on the case, to the extent that they concern the review of the constitutionality of Articles 24 and 273 of the Customs Code of the Russian Federation, are to be discontinued under Subsections 1 and 2, Section 1, Article 43, and Article 68 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”.

3. The Arbitration Court of Saint Petersburg and the Leningrad Region, the Nevsko-Baltiyskaya Transportnaya Kompaniya LLC and the Joint Russian – South African Venture Ekont LLP challenge the constitutionality of Section 2, Article 247 of the Customs Code of the Russian Federation, according to which, penalties in the form of forfeiture (recovery of the value) of goods and vehicles which are direct objects of customs rules violations, prescribed by Subsections 4–6, Article 242 of the Code, are applied irrespective of whether they are basic or additional.

In the applicants’ opinion, the mentioned norm permits to impose penalties without any limitation periods and thus does not conform to Articles 19 (Section 1), 34 (Section 1), 50 (Section 1) and 55 (Sections 2 and 3) of the Constitution of the Russian Federation. Further, upon expiration of the statute of limitations for imposing basic penalties under Section 1, Article 247 of the Customs Code of the Russian Federation, this norm permits to impose additional penalties in the form of forfeiture (recovery of value) of goods and vehicles without imposing basic penalties, what contradicts Articles 19 (Section 1) and 50 (Section 1) of the Constitution of the Russian Federation.

3.1. Within the meaning of Articles 8 (Section 2), 19 (Section 1), 34 (Section 1) and 35 (Section 1) of the Constitution of the Russian Federation, the federal legislator exercising customs regulation is obliged to give due regard not only to the public interests of the state related to its economic security, but also to the private interests of individuals and legal persons as participants in civil law relations and foreign trade.

Upon transportation across the customs border, goods become an object of property transactions and after a short period of time they may not only be in the ownership or lawful possession of certain persons, but could repeatedly change owners (possessors). Frequently the counterparts of persons punished by forfeiture of goods, which are direct objects of customs offences, initiate civil proceedings against these persons. However, the Civil Code of the Russian Federation restricts this possibility by statutes of limitations (Articles 195–197), and the expiration of the statute of limitations is a ground for dismissal of civil actions (Article 199).

Consequently, forfeiture of goods and vehicles irrespective of the time of commission or discovery of customs rules violation might destabilize economic relations, violate guarantees of free movement of goods, services and financial resources, defy support of competition, violate freedom of economic activity and restrict equality of participants in these relations before the law and court, the right to freely use abilities and property for entrepreneurial activities, right of property (Article 8 (Section 1); Article 19 (Section 1); Article 34 (Section 1); Article 35 (Section 1) of the Constitution of the Russian Federation. It is not coherent with the requirement of fairness in imposing responsibility for offences under Article 1 (Section 1) of the Constitution of the Russian Federation, which defines the Russian Federation as a democratic rule of law state. Also, it does not conform to Article 55 (Section 3) of the Constitution of the Russian Federation prohibiting restrictions of the rights and freedoms, which are disproportionate to the constitutionally significant aims indicated in it.

Constitutional guarantees of rights and freedoms of citizen necessitate the preservation of a balance of the public interests of the state and the private interests of participants in the customs relations. This balance dictates determination of time limits for forfeiture of goods and vehicles which were direct objects of customs rules violation. Moreover, for purposes of customs control, Article 182 of the Customs Code of the Russian Federation prescribes periods of safekeeping for documents and evidence. The prescribed three-year period *de facto* established temporal limits for recovery of evidence of customs rules violation necessary for holding a person liable. Thus, the legislator acknowledges that outside these time limits an offence may not be proved by documentary evidence, and, consequently, punishment for it is precluded.

Pursuant to Section 1, Article 247 of the Customs Code of the Russian Federation, the statute of limitations for customs rules violation, prescribed by Subsections 1–3, Article 242 of

the Code, starts running from the date the offence is discovered. However, this procedure may not be extended to all cases of forfeiture (recovery of value) of goods and vehicles. Given that in civil law relations the statute of limitations under Article 200 of the Civil Code of the Russian Federation starts running from the date a person became aware or should have become aware of violation of his right, the calculation of statute of limitations from the date an offence was discovered (in customs relations) does not strike a reasonable balance between the public interests of the state and the private interests of foreign trade participants. In these cases, the period for imposing a penalty for customs rules violation in the form of forfeiture of goods which were direct objects of an offence shall be calculated from the moment of the commission of the offence. At the same time, this imperative may not be applied to continuing offences, for which the statute of limitations starts running from the date of discovery of the offence.

Thus, Section 2, Article 247 of the Customs Code of the Russian Federation, as permitting to impose forfeiture on goods and vehicles which were direct objects of customs offences, irrespective of the time of commission or discovery of a customs rules violation, does not conform to the Constitution of the Russian Federation and its Articles 19 (Section 1), 34 (Section 1), 35 (Section 1), 50 (Section 1) and 55 (Sections 2 and 3).

Under Articles 10 and 55 (Section 3) of the Constitution of the Russian Federation in conjunction with its Articles 71 (Subsection “g”) and 76 (Section 1), the determination of the respective periods is within the competence of the federal legislator. Within the meaning of Article 196 of the Civil Code of the Russian Federation and Article 182 of the Custom Code of the Russian Federation, until it is determined otherwise, the statute of limitations for imposing a penalty in the form of forfeiture of goods which were direct objects of customs rules violation shall be three years. However, nothing precludes the legislator from establishing a different statute of limitations for imposing penalties with due regard to the kind of the customs offence.

3.2. The kinds of penalties which may be imposed for customs offences are listed in Article 242 of the Customs Code of the Russian Federation without dividing them into basic and additional penalties. However, such division is possible under other provisions of the Customs Code of the Russian Federation prescribing responsibility for certain kinds of customs rules violations and Section 1, Article 247 of the Code, which prohibits imposition of certain kinds of penalties after the expiration of the statutes of limitations running from the date of discovery of the offence.

Section 2, Article 247, in conjunction with Article 242 of the Customs Code of the Russian Federation does not prohibit to impose the same penalty both as a basic and additional penalty, or to impose an additional penalty without imposing the basic penalty.

Penalties indicated in the mentioned provisions are imposed within the proceedings on the same customs rules violation, by the same law-enforcement authority, and that is why it may not be considered as a repeated conviction prohibited by Article 50 (Section 1) of the Constitution of the Russian Federation. And in these cases the principle of everyone's equality before the law and court (Article 19, Section 1 of the Constitution of the Russian Federation) is not infringed, since the challenged rule is common for all participants of relations concerning customs offences.

Consequently, Section 2, Article 247 of the Customs Code of the Russian Federation, which permits imposition of additional penalties, prescribed by Subsections 4–6, Article 242 of the Customs Code of the Russian Federation, without imposing basic penalties, conforms to the Constitution of the Russian Federation.

4. The Joint Russian – South African Venture Ekont LLP challenges the constitutionality of Section 1, Article 279 of the Customs Code of the Russian Federation, according to which failure to declare or false declaration of goods and vehicles transported across the customs border of the Russian Federation, i.e. failure to declare, in written, oral, or other form prescribed by law, authentic information or declaration of unauthentic information concerning goods, vehicles, their customs regime, and other information, is punishable by a fine of not less than 100 percent and not more than 200 percent of the value of goods and vehicles which were direct objects of the offence, with or without (a) forfeiture of the objects, (b) recovery of the value equal to the value of these goods and vehicles, or (c) recall of the license or qualification certificate.

In the applicant's opinion, this norm permits to impose simultaneously two penalties for one offence, i.e. to impose a fine calculated on the basis of the value of goods and vehicles which were direct objects of customs rules violation, and to recover their value, which is contrary to the Constitution of the Russian Federation and its Articles 19 (Section 1), 34 (Section 1), 35 (Section 1) and 55 (Sections 2 and 3).

It follows from Section 1, Article 279, in conjunction with Articles 243, 245 and 247 of the Customs Code of the Russian Federation, that a fine is a basic monetary penalty calculated on the basis of the value of goods and vehicles, which are direct objects of an offence, and recovery of their value is an additional penalty, which is essentially compulsory forfeiture of financial resources equal to the free (market) cost of these goods, i.e. it is a special equivalent of forfeiture when forfeiture is impossible or unreasonable.

As follows from the submitted documents, after the expiration of the period prescribed by Section 1, Article 247 of the Customs Code of the Russian Federation, no fine for the customs offence was imposed on the Joint Russian – South African Venture Ekont LLP, and the value of

goods exported to a foreign partner under a foreign trade contract was recovered. Consequently, its rights were not violated by the application of sanction of Section 1, Article 279 of the Customs Code of the Russian Federation. Therefore, to this extent the proceedings on this case are to be discontinued. However, it does not preclude reconsideration of the law-enforcement decisions against the Joint Russian – South African Venture Ekont LLP if they were delivered under Section 6, Article 231, Article 230, Subsection 6, Article 291 and Paragraph 4, Article 320 of the Customs Code of the Russian Federation in the interpretation diverging from the constitutional meaning revealed in the present Judgment.

Concluding from the above and pursuant to Articles 68, Sections 1 and 2, Articles 71, 72, 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 provision of Section 6, Article 231, and connected provisions of Article 230, Subsection 6, Article 291, and Paragraph 4, Article 320 of the Customs Code of the Russian Federation, to the extent concerning the responsibility of enterprises, institutions, organizations and individuals exercising entrepreneurial activities without forming a legal person for violation of customs rules, as conforming to the Constitution of the Russian Federation. These provisions do not preclude a possibility for the mentioned participants in customs relations to duly prove that a customs rules violation was a result of extraordinary circumstances, objectively impossible to overcome, and other unforeseen impediments, impossible to overcome, which are beyond the control of the participants in customs relations, provided that they used all reasonable efforts and acted with an appropriate degree of due care and discretion necessary for the performance of their customs obligations.

2. To recognize Section 2, Article 247 of the Customs Code of the Russian Federation, which permits imposition of a penalty in the form of forfeiture (recovery of costs) of goods and vehicles regardless of the time of commission or discovery of the customs rules violation, as non-conforming to the Constitution of the Russian Federation and its Articles 1 (Section 1), 8 (Section 1), 19 (Section 1), 35 (Section 1 and 2) and 55 (Section 3).

Until the adoption of a federal law establishing respective time limits these penalties may not be imposed after three years from the customs rules violation, and for continuing offences from the moment of discovery.

3. To recognize Section 2, Article 247 of the Customs Code of the Russian Federation, which permits to impose additional penalties listed in Subsections 4–6, Article 242 of the

Customs Code of the Russian Federation without imposing principal penalties, as conforming to the Constitution of the Russian Federation.

4. To discontinue proceedings to the extent that they concern review of the constitutionality of Articles 24, 273 and Section 1, Article 279 of the Customs Code of the Russian Federation.

5. The cases of the Nevsko-Baltiyskaya Transportnaya Kompaniya LLC and the Joint Russian – South African Venture Ekont LLP are to be reconsidered according to the established procedure, if they were decided under provisions of Section 2, Article 247 of the Customs Code of the Russian Federation, which permit imposition of a penalty in the form of forfeiture (recovery of costs) of goods and vehicles regardless of the time of commission or discovery of the customs rules violation.

The cases of the AvtoVAZ OJSC, the Kombinat Severonikel OJSC, the Vernost LLC, the Joint Russian – South African Venture Ekont LLP and A. D. Chulkov exercising entrepreneurial activities without forming a legal person are to be reconsidered by the competent authorities according to the established procedure if they were previously decided under provisions of Section 6, Article 231, Article 230, Subsection 6, Article 291 and Paragraph 4, Article 320 of the Customs Code of the Russian Federation in an interpretation diverging from their constitutional meaning established in the present Judgment.

6. 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 its pronouncement, and shall be directly applicable.

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

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