IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT
OF THE RUSSIAN FEDERATION

Judgment
of 22 July 2002 No. 14-П

in the case concerning the review of the constitutionality of certain provisions of the Federal Law "On Restructuring of Credit Institutions", Sections 5 and 6, Article 120 of the Federal Law "On Insolvency (Bankruptcy)" in connection with complaints of certain citizens, the Public Association for Protection of the Rights of Shareholders and Depositors, and Voronezhskoye Konstruktorskoye Buro Antenno-Fidernykh Ustroystv OJSC.

Moscow, 22 July 2002

The Constitutional Court of the Russian Federation composed of Presiding Judge A. L. Kononov and Judges N. S. Bondar, G. A. Vitruk, G. A. Gadzhiev, A. Ya. Sliva, V. G. Strekozov, O. I. Tiunov, B. S. Ebzeev, V. G. Yaroslavtsev,

in the attendance of individuals who submitted their constitutional complaints to the Constitutional Court of the Russian Federation; representatives of the parties; Permanent Representative of the State Duma to the Constitutional Court of the Russian Federation V. V. Lazarev, and representative of the State Duma Deputy P. A. Medvedev; Representative of the Council of the Federation Yu. A. Sharandin, Chairman of the Committee on Constitutional Legislation of the Council of the Federation,

pursuant to Section 4, Article 125 of the Constitution of the Russian Federation, Subsection 3, Section 1, Sections 3 and 4, Article 3, Subsection 3, Section 2, 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 certain provisions of the Federal Law "On Restructuring of Credit Institutions" of 8 July 1999 and Sections 5 and 6, Article 120 of the Federal Law "On Insolvency (Bankruptcy)" of 8 January 1998.

The reason for the consideration of the case is complaints of A. Y. Avanov, A. V. Averkin, G. M. Aveshnikov, G. K. Avksentyuk, A. M. Aksenov, A. B. Aleksandrov, S. N. Aleksukhin, B. P. Allenov, V. A. Ananyev, S. S. Ananyeva, V. B. Ardaiyev, V. V. Asipova, Y. L. Bakalina, V. B. Belitsky, L. L. Belyayeva, Y. M. Belogurova, I. I. Biryukov, O. V. Biryukova, Y. A. Borisova, S. I. Borisova, G. N. Burlakova, V. I. Butko, V. N. Butko, M. G. Butko, L. V. Vasilyeva, L. A. Vasilkin, L. A. Vinogradova, Y. N. Voitova,

A. Y. Volovikov, Y. I. Vorobyova, I. I. Vorobyova, L. G. Vorontsova, A. L. Votintseva, L. N. Galata, V. A. Generalov, I. V. Godina, G. D. Goncharova, V. K. Gorbania, F. V. Gorbachev, A. I. Gorsky, S. I. Gracheva, V. M. Godkov, M. P. Guseva, V. G. Davydova, G. A. Davydov, N. I. Dankova, S. P. Lolgova, Ye. V. Dunayeva, P. I. Dyuzhy, T. A. Yeliseyeva, D. M. Yepifanov, B. S. Zhuravlyov, G. Y. Zaytzev, I. S. Zaytzeva, S. B. Zagorodnikov, M. B. Zak, Y. A. Zakharov, A. Y. Zenushkin, V. I. Zernitzky, M. Y. Zyskovich, A. G. Ivanov, V. S. Ilyinchik, Y. V. Ishukov, T. V. Kazantzeva, L. P. Kamenskaya, S. A. Kvasova, S. Y. Kibizov, Y. S. Kibizov, A. K. Kibizova, A. N. Klementyeva, G. P. Klementyeva, V. F. Klisenko, S. N. Kozhevnikova, L. F. Kolovskaya, Y. V. Kolovsky, T. A. Korneyeva, A. L. Kotlyarov, A. M. Kotov, I. G. Koyusheva, V. M. Kuzko, I. A. Kuzko, A. D. Krylova, V. D. Kusnetzov, L. P. Kuznetzova, A. S. Kuleshova, A. A. Lagutina, A. F. Laptev, V. V. Leonovich, V. I. Listopad, S. I. Logvin, Y. L. Mayorchuk, V. V. Makarchuk, A. N. Mamonchuk, K. V. Makeyev, G. N. Manturova, S. V. Markin, V. M. Margolin, V. I. Marinicheva, I. V. Matveyeva, N. V. Melnikova, L. M. Mityunina, M. S. Mityunina, V. P. Mikhaylov, V. M. Murashkin, S. M. Mukhametov, I. L. Nemkov, P. A. Nefedov, N. K. Nikolayenko, A. N. Obraztsov, L. F. Obolenskaya, S. I. Orlova, Y. P. Oskardov, D. I. Petrichenko, K. G. Piskunova, L. Y. Pyankova, V. A. Radina, I. S. Revesa, I. M. Rodionova, A. P. Roshchina, R. D. Savelyev, I. I. Savelyeva, A. A. Sadygov, A. K. Sarksyan, N. A. Sashevskaya, A. I. Semenov, Y. T. Serebryanaya, M. K. Sivash, V. I. Sidorova, L. V. Skvortsova, A. I. Skryabina, I. G. Skryabina, T. V. Skobeleva, Y. A. Slavinskaya, A. V. Sorokina, L. V. Sorokina, Y. V. Surkova, L. I. Surov, O. L. Surova, M. V. Telyanova, L. T. Telyanova, N. I. Timofeyev, L. D. Titova, N. P. Tkach, G. V. Tkachenko, Y. L. Tudorovsky, O. V. Tymchuk, N. V. Uspensky, Y. P. Fedosyuk, V. A. Filippov, S. N. Fomin, N. I. Fomina, N. I. Fomicheva, A. Y. Frolova, G. Y. Frolova, S. F. Khlebnikova, T. A. Khlebnikova, V. T. Khlystova, L. I. Tselina, A. N. Cherkova, A. N. Chernov, Y. V. Cherny, A. S. Chernyshova, L. M. Chuvashova, Y. F. Shmaray, Y. M. Sharova, R. S. Sheraliyev, L. A. Sheraliyeva, M. N. Shestopalov, S. I. Shekhovtsov, Y. A. Shekhovtsova, I. N. Shinkaryova, D. A. Shinkaryova, V. V. Shumovoy, I. V. Yazynina, and complaints of the Public Association for Protection of the Rights of Shareholders and Depositors" and Voronezhskoye Konstruktorskoye Buro Antenno-Fidernykh Ustroystv OJSC about violation of constitutional rights and freedoms by certain provisions of the Federal Laws "On Restructuring of Credit Institutions", "On Insolvency (Bankruptcy)" and "On Enforcement Proceedings" concerning the order (procedure) and the conditions for conclusion and approval of a settlement agreement during restructuring of credit institutions, and provisions of the Federal

Law “On Restructuring of Credit Institutions” establishing an order and conditions for reducing registered (charter) capital of a credit institution during restructuring.

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.

Having heard the report of Judge-Rapporteur V. G. Yaroslavtsev, statements by the parties and their representatives, the expert opinion of O. M. Oleynik, PhD in Law, interventions by M. Yu. Barshchevsky, Plenipotentiary Representative of the Government of the Russian Federation to the Constitutional Court of the Russian Federation, A. G. Guzanov for the Central Bank of the Russian Federation, A. G. Melnikov and P. D. Barenboym for the State Corporation Agency on Restructuring of Credit Institutions; 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. Under Article 23 of the Federal Law “On Restructuring of Credit Institutions”, the Bank Rossiysky Kredit, OJSC, and the joint-stock commercial bank SBS-AGRO, credit institutions under the administration of the Agency on Restructuring of Credit Institutions, concluded settlement agreements with their creditors. Under these settlement agreements, approved by the Arbitration Court of Moscow, the obligations under bank deposit contracts, which had not been performed by the banks, were transformed into new obligations.

Individuals, who are depositors of the Bank Rossiysky Kredit, OJSC, and of the joint-stock commercial bank SBS-AGRO, and the Public Association for Protection of the Rights of Shareholders and Depositors, in their complaints challenge the constitutionality of the following provisions of the Federal Law “On Restructuring of Credit Institutions”: (a) Article 10 vesting the Agency on Restructuring of Credit Institutions with the right to decide on whether a credit institution shall be put under the Agency’s administration or to refuse to take a credit institution under its administration; (b) Subsections 1 and 3, Section 2, Article 13, establishing the consequences of administration of a credit institution by the Agency; (c) Section 3, Article 14, providing that in the exercise of restructuring measures in respect of a credit institution the Agency shall satisfy the creditors’ claims in the order and in priority provided by the civil legislation of the Russian Federation; (d) Section 1 and Subsection 1, Section 2, Article 15, establishing that the Agency takes restructuring measures in respect of a credit institution on the basis of the credit institution’s restructuring plan which has to be implemented within a period not exceeding three years from the moment the credit institution was put under the Agency’s

administration and which must include measures aimed at restructuring the credit institution's obligations; (e) Article 22 vesting the Agency with the right to take, through the management bodies of the credit institution, a decision on liquidating the credit institution and, consequently, to request the Bank of Russia to annul (cancel) the banking license of the credit institution; (f) Articles 23–27 establishing the order and the conditions for the conclusion and approval of a settlement agreement during restructuring of a credit institution's obligations, and (g) Section 3, Article 46, vesting the Bank of Russia with the power to provide official clarifications on matters of enforcement of the Federal Law "On Restructuring of Credit Institutions".

V. B. Ardayev, S. B. Zagorodnikov, I. S. Zaytzeva, K. V. Makeyev, A. A. Sadygov, N. V. Uspenskaya and I. V. Yazynina also request to review the constitutionality of certain provisions of Sections 5 and 6, Article 120 of the Federal Law "On Insolvency (Bankruptcy)", which establish that a settlement agreement is binding on all the parties to it and which do not permit unilateral repudiation of this agreement. Further, K. V. Makeyev requests to review the constitutionality of Section 2, Article 23 of the Federal Law "On Enforcement Proceedings", establishing that court approval of a settlement agreement concluded between the person recovering the debt and the debtor is one of the grounds for terminating the enforcement proceedings.

The applicants allege that the norms of the Federal Laws "On Restructuring of Credit Institutions', "On Insolvency (Bankruptcy)" and "On Enforcement Proceedings", challenged by them, violate the constitutional rights and freedoms guaranteed by Articles 1, 2, 3 (Section 4), 6 (Section 2), 7, 8, 10, 11 (Sections 1 and 3), 15, 16, 17, 18, 19, 20, 21 (Section 1), 22, 23, 28, 29, 30, 32, 34, 35, 38, 40 (Section 1), 45, 46, 47 (Section 1), 53, 54, 55, 56, 57, 76, 108 (Section 1), 114 (Subsections 'a' and 'd', Section 1), 118, 120, 123 (Section 3), 132 (Section 1) of the Constitution of the Russian Federation and do not conform to the Preamble.

1.1. Pursuant to Articles 96 and 97 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", the individual has the right to apply to the Constitutional Court with a complaint about violation of his constitutional rights and freedoms by law, and such complaint shall be admissible if the challenged law was applied or is to be applied in the applicant's case and if this law affects his constitutional rights and freedoms. Failure to meet these criteria is a ground to reject the complaint. Moreover, the Constitutional Court of the Russian Federation takes a decision to reject a complaint if a judgment on the subject matter of the complaint was previously delivered and still remains in force. If grounds for rejection are discovered in the course of the proceedings at the Constitutional Court of the Russian Federation, the proceeding on the constitutional complaint shall be discontinued

pursuant to Article 68 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation".

Having examined the documents attached to the complaints and having heard the arguments of the applicants in the present case, the Constitutional Court of the Russian Federation reached the conclusion that the provisions of Article 10, Subsection 1, Section 2, Article 13, Section 1 and Subsection 1, Section 2, Article 15, Article 22, Section 4, Article 23 and Section 3, Article 46 of the Federal Law "On Restructuring of Credit Institutions" were not applied in the applicants' cases, and therefore, to the extent concerning review of their constitutionality, the proceedings on the complaints are to be discontinued.

The provisions of Subsection 3, Section 2, Article 13 of the Federal Law "On Restructuring of Credit Institutions", concerning the imposition and extension of a moratorium on satisfaction of the creditors of a credit institution during restructuring, have already been reviewed by the Constitutional Court of the Russian Federation (Judgment of 3 July 2001 in the case concerning the review of the constitutionality of certain provisions of Subsection 3, Section 2, Article 13 of the Federal Law "On Restructuring of Credit Institutions", and Sections 1 and 2, Article 26 of the Federal Law "On Insolvency (Bankruptcy) of Credit Institutions"), and therefore to this extent the proceedings on the complaints are to be discontinued.

Section 3, Article 14 of the Federal Law "On Restructuring of Credit Institutions", which establishes that in the exercise of the restructuring measures in respect of a credit institution the Agency shall satisfy the creditors' claims in the order and in priority provided by the civil legislation of the Russian Federation is a reference rule and may not be regarded as violating the rights and freedoms of individuals themselves. Therefore to this extent the proceedings on the complaints are also to be discontinued.

Section 2, Article 23 of the Federal Law "On Enforcement Proceedings", prescribes termination of enforcement proceedings when the court approves the settlement agreement concluded between the person recovering the debt and the debtor. As K. V. Makeyev believes it was applied in restructuring the bank in which he was a depositor. However, the procedure of concluding a settlement agreement to restructure the credit institution's obligations is regulated by Chapter 4 of the Federal Law "On Restructuring of Credit Institutions". Whether it is possible to apply the norms of the Federal Law "On Enforcement Proceedings" to relations within the process of concluding such settlement agreement has to be decided by courts considering a specific case and choosing the norms to be applied, and, consequently, does not fall within the jurisdiction of the Constitutional Court of the Russian Federation. Therefore, to the extent

concerning the review of the constitutionality of Section 2, Article 23 of the Federal Law "On Enforcement Proceedings", the proceedings on the complaints are to be discontinued.

Voronezhskoye Konstruktorskoye Buro Antenno-Fidernykh Ustroystv, OJSC, challenges the constitutionality of Section 2, Article 6, Section 1, Article 7, Section 2, Article 8, Sections 1, 2 and 3, Article 10, Articles 11 and 12 of the Federal Law "On Restructuring of Credit Institutions", which establish an order and conditions for a decrease (increase) of registered (charter) capital of credit institutions during their restructuring. In the applicant's opinion, the above-mentioned norms are not in conformity with Articles 3 (Section 1), 35 (Sections 1, 2 and 3), 55 (Section 2) and 56 (Section 3) of the Constitution of the Russian Federation to the extent that within the meaning attributed to them in the law-enforcement practice they permit non-judicial removal of the owners from their possession and disposal of their property with concurrent transfer of the respective powers to the Agency on Restructuring of Credit Institutions. However, as follows from Section 1, Article 66, and Section 3, Article 213 of the Civil Code of the Russian Federation, though not being owners of the possessions of the bank the shareholders do not lose their proprietary enforceable claims against it, and therefore their rights established in Article 35 (Section 3) of the Constitution of the Russian Federation are not affected by the challenged norms. Therefore, to the extent that the complaints concern review of the constitutionality of these norms the proceedings are to be discontinued.

1.2. Therefore, the subject matter before the Constitutional Court of the Russian Federation in the present case is the provisions of Sections 1–3, Article 23, Articles 24, 25, 26, and Section 1, Article 27 of the Federal Law "On Restructuring of Credit Institutions", concerning the order and conditions for concluding a settlement agreement, including determining the scope of participants, the procedure of taking decision on and approval of the settlement agreement during the restructuring of the credit institution. The applicants further challenge the constitutionality of interrelated provisions of Sections 5 and 6, Article 120 of the Federal Law "On Insolvency (Bankruptcy)", namely:

– provision of Paragraph 1, Section 1, Article 23 of the Federal Law "On Restructuring of Credit Institutions", according to which, with an aim to restructure the credit institution, this credit institution and its creditors may conclude a settlement agreement, to the extent that it contains a norm according to which the obligations of banks are subject to restructuring if there are decisions of courts of general jurisdiction, which entered into legal force, concerning these obligations, i.e. the norm providing for termination of enforcement of the court decisions in force;

– provision of Paragraph 2, Section 1, Article 23 of the Federal Law "On Restructuring of Credit Institutions", according to which the settlement agreement rules of the Federal Law

"On Insolvency (Bankruptcy)" are applied to the conclusion and approval of the settlement agreement during the restructuring of a credit institution;

– provision of Paragraph 1, Section 1, Article 24 of the Federal Law "On Restructuring of Credit Institutions", according to which the participants of the creditors' union with voting rights are the creditors, and for claims concerning mandatory payments also tax authorities and other authorized bodies (organizations);

– provisions of Sections 3 and 4, Article 24 of the Federal Law "On Restructuring of Credit Institutions", according to which each creditor during a meeting of the union of creditors has a number of votes proportionate to the amount of his claims at the moment the credit institution was put under the administration of the Agency on Restructuring of Credit Institutions; the decisions during the meeting of the union of creditors are taken by a majority vote of the creditors present at the meeting,

– provisions of Paragraph 2, Section 2, Section 4, Article 24, and Section 3, Article 26 of the Federal Law "On Restructuring of Credit Institutions", concerning the formation, procedures and activities of a body entitled to consider disputes about the amounts of the creditors' claims, by the union of creditors;

– provisions of Sections 5 and 6, Article 120 of the Federal Law "On Insolvency (Bankruptcy)", which establish that the settlement agreement is binding on all the parties to it and which do not permit unilateral repudiation of this agreement.

2. Pursuant to the Constitution of the Russian Federation, freedom of economic activity shall be guaranteed as one of the fundamentals of the constitutional order (Article 8, Section 1); everyone shall have the right to freely use his abilities and property for entrepreneurial and other economic activities not prohibited by law (Article 34, Section 1), and everyone has the right to have property, and to own, use and dispose of it (Section 2, Article 35).

A bank deposit agreement is "other economic activity not prohibited by law", exercised by individuals who expect to gain income in the form of interest on the deposit. Such economic activity implies certain financial risks, which are predetermined by the fact that the activity of credit institutions receiving money from individuals and other depositors as deposits is an entrepreneurial activity – independent activity exercised at their own risk and aimed at systematic gain of profit (Section 1, Article 2 of the Civil Code of the Russian Federation).

The constitutional right to freely exercise entrepreneurial and other economic activities not prohibited by law does not mean that the state assumes the duty to guarantee that each entrepreneur (or an individual depositor) will receive income. However, bank deposits are a source of long-term investments, and this economic activity of depositors, exercised in their private interests, has at the same time public importance. Therefore, as it ensures the

implementation of a unified financial, credit and monetary policy, the state has the right to exercise public law interventions into private law credit relations in case of emerging unfavourable economic conditions (Article 71 "g", Article 114 "b" of the Constitution of the Russian Federation).

3. Lack of strategic banks' ability to perform their monetary obligations to creditors and their duties to pay mandatory payments to the budget predetermined the enactment of the Federal Law "On Restructuring of Credit Institutions" in 1999. Pursuant to Article 3 of this Law, credit institutions may be put under the administration of the Agency on Restructuring of Credit Institutions if their capital adequacy ratio is below two percent and if they do not satisfy monetary claims of certain creditors and (or) do not perform their duty to pay mandatory payments for more than seven days from the due date, i.e. if for any reasons credit institutions found themselves in a difficult financial situation with no sufficient assets to satisfy the claims of all creditors in full.

Some applicants in the present case, who are depositors of the Bank Rossiysky Kredit, OJSC, and the joint-stock bank SBS-AGRO, as is demonstrated by their arguments, actually insisted on immediate liquidation of these banks. However, the choice of a strategy for problematic banks, especially strategic banks, i.e. determining whether it is more appropriate to take measures aimed at reducing the transaction costs, enhancement of management, recovering debts, restructuring the credit institution's obligations, or to initiate liquidation proceedings, is an element of an economic policy, which falls within the competence of the Federal Assembly and the Government of the Russian Federation and which shall not be assessed by the Constitutional Court of the Russian Federation since the latter decides on matters of law only (Article 2 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation").

4. Restructuring a credit institution is understood by the Federal Law "On Restructuring of Credit Institutions" as a set of measures taken in respect of the credit institution and designed to eliminate its financial instability and restore its paying capacity (Section 1, Article 2). Under Section 2, Article 2, Article 5 and Section 2, Article 6 of the mentioned Federal Law, restructuring measures in respect of credit institutions are taken by the Agency on Restructuring of Credit Institutions, which conducts due diligence of the credit institution, starting from the receipt of the Bank of Russia proposal to put the credit institution under the Agency's administration until the credit institution is put under the Agency's administration (or when the Agency refuses to take the credit institution under its administration). The Agency is equally responsible for further restructuring of the credit institution.

Within the meaning of these provisions, credit institution restructuring is a special measure aimed at its financial rehabilitation. One of the means to achieve this aim in

restructuring a credit institution is the restructuring of obligations through a settlement agreement concluded between the credit institution and its creditors (the union of creditors acting on their behalf).

The settlement agreement, in its turn, is aimed both at fairly and proportionately satisfying the claims of all creditors by providing them with equal legal possibilities to achieve individual economic purposes, and at preserving the activity of the institution (debtor) by restoring its paying capacity. Keeping this public law aim in mind, a credit institution and its creditors, in a manner prescribed by law, reach an agreement, and the creditors make certain concessions in order to enjoy greater satisfaction of their claims without having recourse to liquidation of the credit institution as prescribed by Article 22 of the Federal Law "On Restructuring of Credit Institutions". However, as follows from Paragraph 3, Section 2, Article 24 of this Federal Law, creditors have the right either to conclude a settlement agreement or to reject it.

A settlement agreement in restructuring is concluded according to the rules established for concluding settlement agreements in bankruptcy proceedings by the Federal Law "On Insolvency (Bankruptcy)", except as is otherwise provided by Chapter 4 of the Federal Law "On Restructuring of Credit Institutions" or follows from the nature of the relations in implementing this Federal Law (Section 1, Article 23). These settlement agreements, by their legal nature, differ considerably from a settlement agreement concluded in court proceedings upon lawsuits (Article 37 of the Arbitration Procedure Code of the Russian Federation). In relations emerging during the conclusion of a settlement agreement in restructuring or in bankruptcy proceedings, public law elements prevail. These relations are based on prescribed by law coercion of the minority creditors by the majority, and, consequently, due to the impossibility of another way to reach a single opinion, the will of the parties is formed here on the basis of the principles distinct from those used in court proceedings upon lawsuits.

The provisions of Article 64 of the Civil Code of the Russian Federation are not applicable to relations concerning the restructuring of credit institutions' obligations, because they regulate the priority of creditors only in case of liquidation of these institutions. However, this Article expressly gives preferences to such a category of creditors as individuals: according to Section 1 of this Article, in case of liquidation of banks or other credit institutions, drawing money from individuals, the claims of individuals who are creditors of the banks and other credit institutions drawing money from individuals shall be satisfied in the first place.

As the practice of enforcement of the Federal Law "On Restructuring of Credit Institutions" demonstrates, the general preference given by the legislator to the interests of individual depositors (which is a manifestation of the nature of the Russian Federation as a social

state under Section 1, Article 7 of the Constitution of the Russian Federation), was taken into account in determining the conditions for settlement agreements in credit institutions restructuring, and the interests of low-income and other socially unprotected groups were given due regard.

However, in spite of the federal legislator's express intent to create a preferential legal regime for individual depositors, the basic laws of market economy and legal principles of regulation inherent in them and stemming from the meaning and the spirit of the Constitution of the Russian Federation do not allow the legislator to establish a procedure for concluding a settlement agreement in case of credit institutions restructuring which secures individual creditors' recovery of their deposits in full due to reducing the payments due to other creditors. Any other approach would contradict the principle of Article 17 (Section 3) of the Constitution of the Russian Federation prescribing that the exercise of the rights and freedoms of man and citizen shall not violate the rights and freedoms of others.

Economic relations in the credit area may only function normally if the principles of legal regulation are truly lawful, i.e. if they embody the ideas of fairness, freedom, and universal and equal measure applied to all. The laws of market economy require a settlement agreement during restructuring to be a reasonable compromise of the interests of the depositors, other groups of creditors, banks and their founding shareholders (participants), and the State.

Within the meaning of Article 8 (Section 2) of the Constitution of the Russian Federation, according to which private, state, municipal and other forms of property shall be recognized and equally protected in the Russian Federation, all creditors (individual depositors, commercial organizations, public law entities) must have equal opportunities to conclude settlement agreements and determine their conditions. Any preference given by the legislator to one of the groups of creditors over the others would remove the very opportunity to conclude a settlement agreement since no regard would be given to the economic interests of all the creditors. It would violate the constitutional principle of equality stipulating the necessity of equal protection for all owners of property. This principle receives detailed regulation in Section 4, Article 212 of the Civil Code of the Russian Federation, which states that the rights of all owners shall be protected equally.

Considering these legal principles and proceeding from the economic (proprietary) nature of the creditors' claims against the credit institution during restructuring proceedings, the number of a creditor's votes is determined depending on the amount of his claims against the debtor. Pursuant to the Federal Law "On Restructuring Credit Institution", each creditor at a meeting of the union of creditors has a number of votes proportionate to the amount of the creditor's claims at the moment when the credit institution was put under the administration of the Agency on

Restructuring of Credit Institutions (Paragraph 1, Section 3, Article 24). Decisions at the meeting of the union of creditors are made by a majority vote of the creditors present at the meeting unless otherwise provided by Chapter 4 of this Federal Law (Paragraph 2, Section 4, Article 24).

The provisions determining the order (procedure) of voting and decision-making at the meeting of the union of creditors are aimed at identifying and coordinating the common interests of the credit institution's creditors. Making decisions by a majority of votes of all the creditors, considering the amounts of their monetary claims, is a democratic procedure which conforms to the principle of equality of all participants in civil law relations (Section 1, Article 1 of the Civil Code of the Russian Federation), which is a manifestation of the constitutional principle of equality. Any other principles of voting in concluding a settlement agreement would entail unreasonable preferences to one group of creditors and prejudice against the others. The principle of determining the number of creditors' votes chosen by the legislator conforms to the principle of fairness.

Consequently, the provisions of Articles 23–27 of the Federal Law "On Restructuring of Credit Institutions", which determine the order (procedure) and conditions for concluding settlement agreements between credit institutions under the administration of the Agency on Restructuring of Credit Institutions and their creditors are in conformity with the Constitution of the Russian Federation.

5. As follows from Chapter 4 of the Federal Law "On Restructuring of Credit Institutions", the union of creditors which takes a decision to conclude a settlement agreement on behalf of the creditors does not fall within the concept of "association" stipulated by Article 30 of the Constitution of the Russian Federation.

The union of creditors is a meeting of creditors of a credit institution, who have civil law contracts with the credit institution or who are recognized as such (tax authorities and other authorized bodies), but not any newly formed union of individuals and legal persons created according to rules established by them. Under the civil law principles of freedom of contract, it is presumed that each creditor entered into legal relations with the credit institution voluntarily, without any compulsion. The content of these relations is the rights and obligations of its participants. All the creditors of a credit institution are objectively united by the fact that each of them has an enforceable claim against the credit institution, which predetermines their status as creditors in concluding a settlement agreement.

Therefore, the provisions of the Federal Law "On Restructuring of Credit Institutions", which establish the powers and regulate the activity of the union of creditors as a meeting of creditors of the credit institution, do not violate their constitutional rights established in Article 30 of the Constitution of the Russian Federation.

6. The provisions of Sections 5 and 6, Article 120 of the Federal Law "On Insolvency (Bankruptcy)", prescribe the binding nature of the settlement agreement for all the persons participating in it and prohibit its unilateral repudiation. It is an essential precondition for the debtor to satisfy the creditors' claims in the interests of all groups of creditors, because it is impossible to satisfy each claim separately. This rule is applicable to relations concerning the conclusion and approval of settlement agreements in credit institutions restructuring.

The fact that one of the participants of the settlement agreement within the restructuring procedure is the state acting through the legislatively authorized Agency on Restructuring of Credit Institutions, which decides whether to conclude the settlement agreement on behalf of the credit institution, is a manifestation of public law elements of these relations. These public law elements necessarily presume binding nature of the settlement agreement for all the participants.

Creditors who, under court decisions, hold writs of execution against possessions of the credit institution are also included in the scope of parties to the settlement agreement, and their claims must be entered in the register of the creditors' claims. The settlement agreement, which alters the manner and procedure for executing the respective court decisions for these creditors imposes a delay on the performance of the debtor's (credit institution's) obligations. Moreover, the essential elements of a settlement agreement, pursuant to Section 1, Article 122 of the Federal Law "On Insolvency (Bankruptcy)", are clauses on the amount, order and time limits for the debtor's performance of the obligations, and they must be reviewed by the arbitration court approving the settlement agreement.

Consequently, satisfaction of the creditors' claims against credit institutions only under a settlement agreement, provided by the Federal Law "On Restructuring of Credit Institutions" (Article 23), is not only a proportionate restriction, but also a mandatory condition which precludes unlawful preference for the satisfaction of certain creditors' claims over the others, while the claims are identical in their nature. Any other approach would not be in conformity with Articles 17 (Section 3) and 19 of the Constitution of the Russian Federation.

7. In the applicants' opinion, the provisions of Sections 1–3, Article 23 of the Federal Law "On Restructuring of Credit Institutions", regulating the conclusion of a settlement agreement, do not guarantee that the claims of the bank depositors shall be satisfied in full and result in unlawful (without court decision) deprivation of property.

Meanwhile, Section 3, Article 23 of the Federal Law "On Restructuring of Credit Institutions", and Sections 4 and 5, Article 120 of the Federal Law "On Insolvency (Bankruptcy)", impose an obligation to apply to the arbitration court for approval of the settlement agreement, and the settlement agreement enters into force only after it is approved by the arbitration court. Consequently, if a settlement agreement is concluded, no restriction on the

proprietary rights of the creditors is possible without a court decision. Moreover, a creditor has the right to challenge the settlement agreement in court, and the court shall invalidate it if the agreement contains clauses securing preferences to certain creditors or infringing the rights and lawful interests of certain creditors (Article 127 of the Federal Law "On Insolvency (Bankruptcy)"). The arbitration court also has the right to deny approval of the settlement agreement if its conditions are not in conformity with federal laws and other legal acts of the Russian Federation (Section 2, Article 125 of the Federal Law "On Insolvency (Bankruptcy)").

Pursuant to the Federal Law "On Restructuring of Credit Institutions", the founding shareholders (participants) of the credit institution and other interested parties have the right to challenge in court the decision of the Agency on Restructuring of Credit Institutions as provided by the legislation of the Russian Federation (Article 44), and the decision of the Bank of Russia proposing to put the credit institution under the Agency's administration (Section 3, Article 7). The legality and validity of the Agency's decisions may also be reviewed in court proceedings.

Therefore, the Federal Laws "On Restructuring of Credit Institutions" and "On Insolvency (Bankruptcy)" do not imply non-judicial deprivation of the creditors of their possessions and do not violate the right to judicial protection guaranteed by the Constitution of the Russian Federation.

In approving settlement agreements, courts must consider the purposes of the settlement agreement, namely, whether it is aimed, as prescribed by the legislator, at restoring the credit institution's paying capacity, including satisfaction of the depositors' claims, or it is used contrary to the purpose of the restructuring institution, e.g. to secure unreasonable preferences to a certain group of creditors or to the owners of the credit institution or to revise or extend the periods of discharge for the debts to the creditors. At the same time a court, pursuant to Article 10 of the Civil Code of the Russian Federation, may deny a person protection of his right if the person exercises this right with the sole purpose to cause damage to other person.

Concluding from the above and pursuant to Article 68, Sections 1 and 2, Article 71, Articles 72, 74, 75, 79 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 provisions of Sections 1–3, Article 23, Articles 24, 25, 26 and Section 1, Article 27, of the Federal Law "On Restructuring of Credit Institutions" concerning the order (procedure) and conditions for concluding a settlement agreement, *inter alia* with regard to determining its participants, decision making and approval of the settlement agreement during credit institutions restructuring, and provisions of Sections 5 and 6 of the Federal Law

"On Insolvency (Bankruptcy)" to the extent that they concern the order and conditions for concluding and approving the settlement agreement during credit institution restructuring as conforming to the Constitution of the Russian Federation.

2. The proceedings are discontinued to the extent concerning the review of the constitutionality of Section 2, Article 6, Section 1, Article 7, Section 2, Article 8, Sections 1, 2 and 3, Article 10, Articles 11 and 12, Subsections 1 and 3, Section 2, Article 13, Section 3, Article 14, Section 1 and Subsection 1, Section 2, Article 15, Article 22, Section 4, Article 23 and Section 3, Article 46 of the Federal Law "On Restructuring of Credit Institutions", and Section 2, Article 23 of the Federal Law "On Enforcement Proceedings".

3. This Judgment shall be final and shall not be subject to any appeal, it shall come into force immediately upon pronouncement; it shall be directly applicable and shall not require confirmation by any other state body or officials.

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. 14-П