

IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT  
OF THE RUSSIAN FEDERATION

Judgment  
of 29 June 2004 No. 13-II

in the case concerning the review of the constitutionality of certain provisions of Articles 7, 15, 107, 234, and 450 of the Criminal Procedure Code of the Russian Federation upon a request of a group of State Duma deputies.

Moscow, 29 June 2004

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

in the attendance of the State Duma deputy S. A. Popov and attorney Yu. A. Kostanov representing the group of State Duma deputies who submitted their request to the Constitutional Court of the Russian Federation, Permanent Representative of the State Duma to the Constitutional Court of the Russian Federation Ye. B. Mizulina, Representative of the Council of the Federation Ye. V. Vinogradova, PhD in Law, and Plenipotentiary Representative of the President of the Russian Federation to the Constitutional Court of the Russian Federation M. A. Mityukov,

pursuant to Section 2 “a”, Article 125 of the Constitution of the Russian Federation, Article 3 (Subsection 1 “a”, Section 1 and Sections 3 and 4), Article 22 (Section 2, Subsection 1 “a”) and Articles 36, 74, 84, 85 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 Articles 7, 15, 107, 234, and 450 of the Criminal Procedure Code of the Russian Federation.

The reason for the consideration of the case is a request of a group of State Duma deputies challenging the constitutionality of the specified legal provisions. The ground for the consideration of the case is the discovered uncertainty of whether these provisions are in conformity with the Constitution of the Russian Federation.

Having heard the report of Judge-Rapporteur N. V. Seleznev, statements by the parties’ representatives and interventions of the following representatives invited to participate in the hearing: Judge V. V. Demidov for the Supreme Court of the Russian Federation; S. G. Kekhlerov for the Office of the Prosecutor General of the Russian Federation;

L. N. Bashkatov for the Federal Security Service of the Russian Federation; B. Y. Gavrilov for the Ministry of Internal Affairs of the Russian Federation; V. I. Seliverstov for the Commissioner on Human Rights in 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 their request, the group of State Duma deputies challenges the constitutionality of the following provisions of the Criminal Procedure Code of the Russian Federation:

Sections 1 and 2, Article 7, which establish the precedence of the Criminal Procedure Code of the Russian Federation over other federal laws and normative acts and do not permit the court, prosecutor, investigator, inquiry authority or inquiry officer to apply a federal law that is inconsistent with this Code, due to their non-compliance with Section 3, Article 76 of the Constitution of the Russian Federation prescribing that federal laws may not contradict federal constitutional laws;

Section 2, Article 15, which separates the functions of the prosecution, defence and adjudication in the criminal case and does not permit vesting them in the same authority or the same official, as relieving government authorities and their officials – prosecutors, investigators and inquiry officers – of their constitutional duty to recognize, observe and protect the rights and freedoms of man and citizen and thus failing to comply with the requirements set forth in Article 2 of the Constitution of the Russian Federation;

Sections 6 and 8, Article 234, which allow granting a defence motion to summon a witness for ascertaining the defendant's alibi only if the motion was filed in the course of the preliminary investigation and do not permit examination of persons protected by witness immunity upon a defence motion, as unreasonably restricting the possibility to prove the defendant's innocence and thus inconsistent with Article 45, Section 1, Article 46 and 55 of the Constitution of the Russian Federation; and

Article 450 taken in conjunction with the provisions of Article 107 to the extent that they permit imposition of a house arrest as a measure of restraint on a member of the Council of the Federation or a deputy of the State Duma without prior consent of the respective Chamber of the Federal Assembly, as contradicting Article 98 of the Constitution of the Russian Federation.

Furthermore, the applicants requested to review the constitutionality of Subsection 2, Section 1, Article 448 of the Criminal Procedure Code of the Russian Federation, which prescribed that a decision to institute a criminal case against the Prosecutor General of the Russian Federation shall be taken by a panel of three Supreme Court judges, and therefore entrusted the court with an unspecific function of prosecution. However, the applicants withdrew

their request after the amendment of the abovementioned provision by the Federal Law “On Amendments to the Criminal Procedure Code of the Russian Federation” of 4 July 2003 (the new version of this provision stipulates that a criminal case shall be instituted against the Prosecutor General of the Russian Federation by a prosecutor who assumes the duties of the Prosecutor General in this situation). Pursuant to Article 44 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, withdrawal of a request is a ground for discontinuing proceedings on the review of the constitutionality of Subsection 2, Section 1, Article 448 of the Criminal Procedure Code of the Russian Federation.

2. Under Article 7 of the Criminal Procedure Code of the Russian Federation (Legality of Proceedings in a Criminal Case), a court, prosecutor, investigator, inquiry authority or officer may not apply a federal law which contradicts the Code (Section 1); and a court having ascertained, in the criminal proceedings, that a federal law or normative act is inconsistent with the Code shall render its decision relying on the Code (Section 2).

To reveal the actual meaning of the challenged provisions, which establish the precedence of the Criminal Procedure Code over federal laws and normative acts, it is crucial to consider the role of these provisions within the existing system of criminal procedure regulation.

2.1. The Constitution of the Russian Federation uses the term “federal law” to denote all laws adopted by the federal legislature, including both federal laws which are adopted in a regular procedure and federal constitutional laws (e.g. Section 2, Article 4; Section 3, Article 55; Section 5, Article 76; Sections 1 and 3, Article 115; Section 2, Article 121; Sections 2 and 4, Article 125), and in a narrower sense, to distinguish regular federal laws as contrasted to federal constitutional laws (e.g. Section 2, Article 105; Article 107; and Section 5, Article 129). At the same time, the Constitution of the Russian Federation relies on the precedence of federal constitutional laws over federal laws. While establishing that both federal laws and federal constitutional laws, which are adopted to regulate issues within the competence of the Russian Federation, shall be applied directly throughout the territory of the Russian Federation (Section 1, Article 76), it states that federal laws must be in conformity with federal constitutional laws (Section 3, Article 76) and establishes a special procedure for adopting federal constitutional laws (Section 1, Article 108).

The Criminal Procedure Code of the Russian Federation is based on the Constitution of the Russian Federation as specifically provided by Section 1, Article 1. The Code contains several provisions distinguishing between the federal constitutional law and the federal law (Section 4, Article 31; and Section 4, Article 355) with the latter being regarded as a regular federal law (Subsections 31, 42 and 44, Article 5; and Subsection 1, Section 2, Article 37). Furthermore, by specifying the requirements of Article 15 of the Constitution of the Russian

Federation, Section 3, Article 1 of the Criminal Procedure Code of the Russian Federation stipulates that the generally recognized principles and norms of international law and international treaties of the Russian Federation shall be an integral part of the Russian legislation regulating criminal proceedings and that the rules of the international treaty shall apply if the international treaty establishes rules different from those envisaged by the Criminal Procedure Code of the Russian Federation.

Hence, the provisions contained in Sections 1 and 2, Article 7 of the Criminal Procedure Code, as implied by their constitutional meaning within the system of norms, do not affect the hierarchy of regulatory instruments created by the Constitution in the legal system of the Russian Federation and do not provide for the Criminal Procedure Code to take precedence in resolving conflicts that may occur between this Code and any federal constitutional laws or international treaties of the Russian Federation. However, whenever an inconsistency is discovered in the course of criminal proceedings between a federal constitutional law (or international treaty of the Russian Federation) and the Criminal Procedure Code (which is a regular federal law), it is the federal constitutional law or international treaty of the Russian Federation that prevails over the regular federal law and therefore shall apply in the case in court pursuant to Section 4, Article 15 and Section 3, Article 76 of the Constitution of the Russian Federation.

2.2. Under Article 71, Subsection “o” taken in conjunction with Articles 10, 49 and 50, Section 1, Article 76 and Section 2, Article 118 of the Constitution of the Russian Federation, criminal proceedings are an autonomous area of legal regulation. And the legal form of relations arising out of criminal proceedings is criminal procedure legislation as a separate branch of the Russian legislation system. Given its special significance for the protection of individual rights and freedoms and the interests of society at large, the criminal procedure legislation along with the criminal legislation has been codified and standardized to a maximum possible extent.

The Criminal Procedure Code of the Russian Federation establishing the procedure for criminal proceedings across the territory of the Russian Federation pursuant to its Section 1, Article 1, is a regular federal law that does not prevail over other federal laws within the regulatory hierarchy created by the Constitution of the Russian Federation. As acts of the same legal force, federal laws are subject to the rule *lex posterior derogat priori* (a subsequent law overrides a prior law). In other words, whenever a conflict arises between the subsequent law and the prior law the former shall apply even if it does not specifically overrule the statutes enacted prior to it. At the same time it is the law intended to govern respective relations that should take precedence irrespective of its effective date.

The principles of the rule of law, equality and fairness (Articles 1, 18 and 19 of the Constitution of the Russian Federation) compel the legislator to ensure certainty, clarity, and

lucidity of law norms and their consistency within the existing system of legal regulation. Conflicting legal norms make their application both inconsistent and arbitrary and undermine guaranteed state protection of constitutional rights and freedoms. According to these constitutional provisions taken in conjunction with Section 2, Article 4, Sections 1 and 4, Article 15, Article 71 “o”, Sections 1 and 2, Article 76, and Paragraph 2, Section 2, “Concluding and Transitional Provisions”, of the Constitution of the Russian Federation, the federal legislation should be generally structured in a way ensuring that the new norms regulating criminal procedure, as required by the nature and essence of criminal procedure law, must be coherent with the Criminal Procedure Code of the Russian Federation which, along with the respective international treaties of the Russian Federation, forms an integral part of the existing criminal procedure legislation. Any new criminal procedure rule contradicting the Criminal Procedure Code of the Russian Federation might create uncertainty of the parties’ legal status, cause infringement of individual rights and legitimate interests, and ultimately destabilize the uniform legal framework of criminal proceedings.

The precedence of the Criminal Procedure Code in prescribing the manner in which criminal proceedings should be carried out (outside of which no person may be found guilty of a crime and criminally punished) is established in Sections 1 and 2, Article 7 of the Criminal Procedure Code of the Russian Federation taken in conjunction with Articles 1 and 8 of the Code. In essence, this requirement of the procedural law corresponds to the maximal codification of criminal law and ensures the most appropriate procedural form to implement the latter as a substantive law. Moreover, the legislator took into consideration the fact that the codified statute, which comprehensively regulates relations, has a special role in the legal system of the Russian Federation.

Thus, to implement the constitutional principles of the rule of law, equality and unified legality regime and to ensure state protection of individual rights and freedoms in the sphere of criminal justice, the federal legislator has the power to establish precedence of the Criminal Procedure Code of the Russian Federation over other federal laws which regulate criminal procedure relations, by codifying legal rules governing criminal proceedings.

2.3. The Criminal Procedure Code of the Russian Federation is a systematic set of legal rules which in their interrelation and content unity regulate criminal proceedings at large and their individual elements, phases, stages, and institutions while taking into account their common traits, characteristic features, and manifestations. It is intended to ensure uniformity and coherency of regulatory commands and the law-enforcement practice based on them. This is the reason why the Code takes precedence in the regulation of criminal proceedings. These requirements do not impair the federal legislator’s prerogative to amend and complement the

existing criminal procedure legislation, and at the same time they simplify law-enforcement, since the legislation becomes certain and the risk of distorting the authentic will of the legislator in law-enforcement is significantly reduced.

Nevertheless, the precedence of the Criminal Procedure Code over other regular federal laws is not absolute and is limited to the regulatory subject matter, which is defined by Articles 1–7 of the Code, i.e. the procedure for proceedings (pre-trial and trial) in criminal cases within the territory of the Russian Federation.

In its decisions, the Constitutional Court of the Russian Federation has repeatedly underlined the importance of considering the specificity of subject matters regulated by the statutes when resolving conflicts arising between them (Judgment of 27 March 1996 concerning the constitutionality review of Articles 1 and 21 of the Law of the Russian Federation “On State Secrets” and Judgment of 24 April 2004 the case concerning the review of the constitutionality of certain provisions of the Federal Law “On the Federal Budget for 2002”, the Federal Law “On the Federal Budget for 2003”, the Federal Law “On the Federal Budget for 2004” and annexes thereto). In its Judgment of 27 February 2003 the case concerning the review of the constitutionality of Section 1, Article 130 of the Criminal Procedure Code of the Russian Federation, the Constitutional Court of the Russian Federation concluded that under Articles 46, 47, Section 1, Article 49, Articles 50, 118 and 126 of the Constitution of the Russian Federation further specified by norms of the criminal legislation, criminal procedure legislation and criminal penitentiary legislation, the norms intended to establish procedures for criminal prosecution, punishment, executing and serving of criminal punishment may not replace or annul the provisions of the criminal legislation defining the criminality and punishability of acts and the type and extent of sanctions.

As follows from the constitutional requirements and the decisions of the Constitutional Court of the Russian Federation, the provisions of Sections 1 and 2, Article 7 of the Criminal Procedure Code, establish the precedence of the Code over other regular federal laws only insofar as the Code is the criminal procedure law in the Russian Federation (Articles 2–4 of the Criminal Procedure Code of the Russian Federation). Similarly, the Criminal Code of the Russian Federation is a criminal law (Section 1, Article 3 of the Criminal Code, and Subsection 57, Article 5 of the Criminal Procedure Code). Therefore, according to the principle of legality of criminal proceedings enshrined in criminal procedure law and determined in the subject matter regulated by the Criminal Procedure Code of the Russian Federation, other federal laws as belonging to other areas of legislation should not regulate legal relations which have criminal procedure nature.

2.4. Thus, Sections 1 and 2, Article 7 of the Criminal Procedure Code are not in discord with the Constitution of the Russian Federation, since their provisions on the precedence of the Criminal Procedure Code over other national federal laws and normative legal acts, within their meaning in the current regulatory context, are not intended to resolve conflicts that may arise between this Code and federal constitutional laws, and they cover only cases where the provisions of other federal laws directly regulating criminal proceedings contravene the Criminal Procedure Code of the Russian Federation.

3. Under Section 3, Article 123 of the Constitution of the Russian Federation, judicial proceedings shall rest upon an adversarial trial and equality of arms. The Constitutional Court of the Russian Federation has frequently noted that in criminal proceedings this constitutional principle separates the function of adjudication from that of prosecution and defence, each one to be performed by different parties to the criminal proceedings.

According to the abovementioned principle, the Criminal Procedure Code of the Russian Federation stipulates that the court shall neither be a criminal prosecution authority nor act on the side of the prosecution or defence, but it shall create appropriate conditions for the parties to fulfill their procedural duties and exercise their rights (Section 3, Article 15). The Code also defines the legal status of persons who represent the prosecution and the defence in a criminal proceeding, relying on the nature of procedural functions assigned to each party (Chapters 6–7) and, therefore, ensuring their actual separation.

In prosecuting criminal cases on public or public-private charges on behalf of the State, the prosecutor as well as the investigator, inquiry officer and any other official on the side of the prosecution, must observe the procedure for criminal proceedings set forth in Section 2, Article 1 of the Criminal Procedure Code, in line with the purposes and principles of criminal proceedings laid down by the Code. In particular, they must employ every means at their disposal to ensure protection of the rights and freedoms of man and citizen in criminal proceedings (Article 11), rely on the presumption of innocence in the performance of their professional duties (Article 14), secure the right of the suspect or the accused to defence (Article 16), take decisions in compliance with the requirements of legality, validity and reasonableness (Article 7) under which the charges may be found reasonable only after all the contradicting circumstances of the case have been objectively examined and refuted by the prosecution. Neither the Criminal Procedure Code of the Russian Federation contains provisions relieving the prosecutor, investigator or inquiry officer of these duties, nor does in particular the challenged Article 15, which separates the functions of adjudication, prosecution and defence in a criminal case and does not permit their performance by the same authority or official.

Therefore, the provisions of Section 2, Article 15 of the Criminal Procedure Code of the Russian Federation, within their constitutional meaning in the system of norms, do not obviate the need to use a whole set of measures provided by the criminal procedure law to prosecutors, investigators and inquiry officers in the process of criminal prosecution in order to protect the rights and freedoms of man and citizen in criminal proceedings. This scope of procedural functions performed by the prosecutor, investigator or inquiry officer and guaranteed by their special procedural status and entrusted powers along with judicial oversight over their decisions or actions, including appellate, cassation and supervisory review, ensure that in criminal proceedings the State fulfills its duty to recognize, observe and protect the rights and freedoms of man and citizen and to guarantee them through administration of justice (Articles 2 and 18 of the Constitution of the Russian Federation).

Thus, the provisions of Section 2, Article 15 of the Criminal Procedure Code of the Russian Federation, do not interfere with the rights and freedoms of man and citizen protected by the Constitution of the Russian Federation and the principles of justice enshrined therein. Consequently, these provisions do not contradict the Constitution of the Russian Federation.

4. Pursuant to Section 1, Article 49 of the Constitution of the Russian Federation, everyone accused of having committed a crime shall be considered innocent until proven guilty according to the rules prescribed by federal law and his guilt is established by a court judgment which has come into legal force. In criminal proceedings, proving charges consists in the collection, review, and evaluation of evidence by an inquiry officer, an investigator, a prosecutor, and a court (Articles 14, 85 and 86 of the Criminal Procedure Code of the Russian Federation).

As prescribed by Articles 2, 18 and Section 1, Article 45 of the Constitution of the Russian Federation, state protection shall be guaranteed for the rights and freedoms of man and citizen and it is exactly these rights and freedoms that determine the meaning, contents, and enforcement of laws, actions of legislative and executive powers and are ensured by administration of justice. In proving charges, the inquiry officer, investigator and court must take every possible measure using the established procedural forms in order to obtain both incriminating and exculpatory evidence of the crime allegedly committed by the person.

Under Section 2, Article 49 of the Constitution of the Russian Federation, an accused person does not have to prove his innocence. However, this does not mean that the evidence proving innocence of the accused might not be collected or examined if he refuses to participate in this process or for some reasons is unable to do so. The mere fact that the accused has decided to exercise his abovementioned constitutional right gives no ground for either finding him guilty of a crime he is charged with or any other adverse consequences following the application of procedural sanctions, including restrictions placed on the exercise of his procedural rights.

At the same time, Section 6, Article 234 of the Criminal Procedure Code of the Russian Federation states that a defence motion to summon a witness for ascertaining the defendant's alibi shall be granted only where it is filed in the course of the preliminary investigation and denied by the inquiry officer, investigator, or prosecutor. Alternatively, it may be granted where the defence has become aware of such a witness after the completion of the preliminary investigation. These provisions limit the ability of the accused person to prove his case in criminal proceedings during a trial and therefore violate his constitutional right to protect his rights and freedoms by all means not prohibited by law, *inter alia* in court. The norm in question compels the accused to bring a motion to summon a witness for ascertaining his alibi in the course of the preliminary investigation, i.e. it effectively denies the accused his constitutional right not to prove his innocence and actually introduces a procedural sanction for the exercise of this right.

Thus, Section 6, Article 234 of the Criminal Procedure Code of the Russian Federation, does not conform to Section 2, Article 45, Section 1, Article 46 and Section 2, Article 49 of the Constitution of the Russian Federation to the extent that it precludes the possibility for the court to grant a defence motion to summon a witness for ascertaining the defendant's alibi if, while being aware of such witness in the course of the preliminary investigation, no motion was filed and denied by an inquiry officer, investigator or a prosecutor.

5. Article 51 of the Constitution of the Russian Federation, provides that no one shall be obliged to testify against himself, husband or wife and close relatives, whose range is determined by federal law (Section 1); and that federal law may envisage other cases of absolution from the obligation to testify (Section 2).

It is one of the most significant and necessary prerequisites for effective observance of the rights and freedoms of man and citizen to absolve a person from the obligation to give testimony, which could worsen either his own or his close relatives' situation, lead to disclosure of an entrusted secret protected by law, i.e. to provide him a witness immunity. Moreover, within the meaning of Article 51 of the Constitution of the Russian Federation further specified by Subsection 40, Article 5, Article 56 and Section 8, Article 234, of the Criminal Procedure Code of the Russian Federation, in criminal proceedings witness immunity cannot be considered an obstacle for a person who enjoys such immunity to use the information he is aware of, *inter alia* to protect the rights and legitimate interests of the persons concerned.

The Constitutional Court of the Russian Federation has already expressed its legal opinion on whether it is permissible to interrogate persons enjoying witness immunity. In its Decision of 6 March 2003 concerning a complaint of G. V. Tsitskishvili, the Constitutional Court of the Russian Federation found interrogation of these persons to be permissible in certain

circumstances, because absolute prohibition of interrogation in any case would violate the constitutional right to judicial protection and would distort the very essence of this right.

Under Section 8, Article 234 of the Criminal Procedure Code of the Russian Federation, following the parties' motion any persons aware of any information about the circumstances of the investigative actions or about the seizure of documents and their subsequent inclusion in the criminal case file may be interrogated as witnesses with the exception of those who enjoy witness immunity. This Article, taken in conjunction with Subsection 40, Article 5, Article 56, Section 4, Article 271 and Article 278 of the Criminal Procedure Code of the Russian Federation, does not imply that as long as it is not permitted to compel a person enjoying witness immunity to testify about the circumstances of pre-trial proceedings such a person does not have the right to voluntarily give relevant testimony provided that he has been properly informed as a witness of the fact that his testimony may be used as evidence in the criminal case.

Given the constitutional meaning of the Criminal Procedure Code provisions on witness immunity clarified in the Decision of 6 March 2003 and in the present Judgment, Section 8, Article 234 of the Criminal Procedure Code of the Russian Federation does not preclude interrogation of persons enjoying witness immunity about the circumstances of investigative actions or about the seizure of documents and their subsequent inclusion in the criminal case file where they have agreed to give this information following a defence motion. Consequently, the Article in question does not curtail the constitutionally guaranteed judicial protection of the rights and freedoms of man and citizen in criminal proceedings, as stipulated by Articles 45, 46, 49–51, 118 and 123 of the Constitution of the Russian Federation.

6. Article 98 of the Constitution of the Russian Federation provides that Council of the Federation members and State Duma deputies enjoy immunity during the whole term of their mandate; they may not be detained, arrested or searched unless detained *in flagrante delicto*, nor may they be subjected to body search unless it is permitted by federal law in order to ensure safety of other people (Section 1). They may be deprived of their immunity by a decision of the respective chamber of the Federal Assembly following a motion by the Prosecutor General of the Russian Federation (Section 2).

The Constitutional Court stated in its Judgment of 20 February 1996 the case concerning the review of the constitutionality of the provisions of Articles 18, 19 and 20 of the Federal Law “On the Status of the Council of the Federation Deputy and the Status of the State Duma Deputy of the Federal Assembly of the Russian Federation” that inviolability (parliamentary immunity) is an essential element of the parliamentarian's status and a major legal guarantee of his service. It has public law nature and serves the public interest by providing the parliamentarian with enhanced legal protection due to the performance of his state functions and in order to shield him

from unreasonable persecutions and to ensure unobstructed functioning of the parliamentarian and therefore that of the parliament, their autonomy and independence. The Constitution of the Russian Federation permits further specification of these provisions in the federal legislation, since its Article 98 defines only a general scope and conditions for the exercise of parliamentary immunity intended to reinforce the fundamentals of the constitutional order in relation to government by the people (Article 3), separation of powers and autonomy of the authorities of the legislative power (Article 10), conditions enabling the parliament to function without any obstacles.

In particular, constitutional provisions have been further specified by the Criminal Procedure Code of the Russian Federation. Section 2, Article 447 of this Code defines a special procedure in criminal cases involving certain categories of persons, including Council of the Federation members and State Duma deputies, with exceptions envisaged by its Chapter 52. One of these exceptions is provided in Article 450 of the Criminal Procedure Code of the Russian Federation, which determines the specificity of imposing measures of restraint and of conducting certain investigative actions. The Article provides direct guarantees of their status only regarding the use of detention as a measure of restraint. It does not provide directly for consent of the respective chamber of the Federal Assembly to be a precondition for imposing a house arrest on a member of the Council of the Federation or a deputy of the State Duma. However, the absence of this provision cannot be considered as obviating the need for obtaining such consent in order to impose house arrest as a measure of restraint of the abovementioned persons.

Article 107 of the Criminal Procedure Code of the Russian Federation states that house arrest consists in restricting the individual's freedom of movement and prohibition on communicating with certain persons, receiving or sending correspondence and maintaining contacts through any means of communication. A suspect or an accused is put under house arrest by a court decision provided there are sufficient grounds and in accordance with the procedure set forth in Article 108 of the Criminal Procedure Code of the Russian Federation, which regulates all aspects of imposing detention as a measure of restraint. Consequently, the immunity granted to Council of the Federation members and State Duma deputies by Article 450 of the Criminal Procedure Code against imposing the measure of restraint specified in Article 108 of the Code should be also guaranteed to these categories of persons when house arrest is considered as a measure of restraint for them. Otherwise, the legal opinion expressed by the Constitutional Court of the Russian Federation would be overruled, which is impermissible under Section 2, Article 79 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation".

As a result, Article 450 taken in conjunction with Article 107 of the Criminal Procedure Code of the Russian Federation, within its constitutional meaning and normative unity with Article 108 of this Code, implies that Council of the Federation members and State Duma deputies may be put under house arrest as a measure of restraint by a court decision with the consent of the respective chamber of the Federal Assembly, and, therefore, these provisions are in conformity with the Constitution of the Russian Federation.

Concluding from the above and pursuant to Section 2, Article 71, Articles 72, 74, 75, 79 and 87 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 Sections 1 and 2, Article 7 of the Criminal Procedure Code of the Russian Federation, which establish the precedence of the Criminal Procedure Code of the Russian Federation over other federal laws and normative acts, as conforming to the Constitution of the Russian Federation so far as the provisions of these Sections, as implied by their constitutional meaning within the current regulatory context, are not intended to resolve conflicts that may arise between the Code and federal constitutional laws, and they cover only cases where the provisions of other federal laws directly regulating criminal proceedings contravene the Criminal Procedure Code of the Russian Federation.

2. To recognize Section 2, Article 15 of the Criminal Procedure Code of the Russian Federation as conforming to the Constitution of the Russian Federation insofar as the provisions of this Section, within their meaning in the system of criminal procedure rules, neither limit the scope of application of the constitutional principle of adversarial proceedings nor relieve the government officials acting as the prosecution during criminal investigation and trial from their constitutional duty to protect the rights and freedoms of man and citizen against any restriction, including unlawful and unreasonable accusation or conviction.

3. To recognize Section 6, Article 234 of the Criminal Procedure Code of the Russian Federation, as non-conforming to the Constitution of the Russian Federation, its Section 2, Article 45, Section 1, Article 46 and Section 2, Article 49 inasmuch as the norm contained in this Section precludes the possibility for the court to grant a defence motion to summon a witness for ascertaining the defendant’s alibi if, while being aware of such witness in the course of the preliminary investigation, no motion was filed and denied by an inquiry officer, investigator or a prosecutor.

4. To recognize Section 8, Article 234 of the Criminal Procedure Code of the Russian Federation as conforming to the Constitution of the Russian Federation insofar as within its

constitutional meaning and in conjunction with other norms of the Criminal Procedure Code of the Russian Federation it does not preclude interrogation of persons enjoying witness immunity about the circumstances of investigative actions or about the seizure of documents and their subsequent inclusion in the criminal case file where they have agreed to do so.

5. To recognize Article 450 taken in conjunction with Article 107 of the Criminal Procedure Code of the Russian Federation as conforming to the Constitution of the Russian Federation insofar as within their constitutional meaning and regulatory unity with Article 108 of this Code, they imply that Council of the Federation members and State Duma deputies may be put under house arrest as a measure of restraint by a court decision with the consent of the Council of the Federation and the State Duma, respectively.

6. Pursuant to Article 6 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the constitutional meaning elucidated in the present Judgment for the provisions of Sections 1 and 2, Article 7, Section 2, Article 15, Section 8, Article 234, Articles 107 and 450 of the Criminal Procedure Code of the Russian Federation shall be generally binding and shall preclude any other interpretation of these provisions in the law-enforcement practice.

7. 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.

8. 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. 13-II