

IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT  
OF THE RUSSIAN FEDERATION

Judgment  
of 20 April 2006 No. 4-II

in the case concerning the review of the constitutionality of the provision of Section 2, Article 10 of the Criminal Code of the Russian Federation, Section 2, Article 3 of the Federal Law “On the Entry into Force of the Criminal Code of the Russian Federation”, the Federal Law “On Amendments to the Criminal Code of the Russian Federation” and a number of provisions of the Criminal Procedural Code of the Russian Federation concerning the procedure for adjusting judicial decisions in line with the new criminal law abolishing or mitigating criminal liability, in connection with complaints of A. K. Ayzhanov, Yu. N. Aleksandrov, and others.

Moscow, 20 April 2006

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

in the attendance of attorney M. A. Anuchin, representative of A. A. Baidimirov; 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; Plenipotentiary Representative of the President of the Russian Federation to the Constitutional Court of the Russian Federation M. V. Krotov,

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

in an open hearing, examined the constitutionality of Section 2, Article 10 of the Criminal Code of the Russian Federation, Section 2, Article 3 of the Federal Law “On the Entry into Force of the Criminal Code of the Russian Federation”, the Federal Law “On Amendments to the Criminal Code of the Russian Federation” and a number of provisions of the Criminal Procedural Code of the Russian Federation concerning the procedure for adjusting judicial decisions in line with the new criminal law abolishing or mitigating criminal liability.

The reasons for the consideration of the case is complaints of A. K. Ayzhanov, Y. N. Aleksandrov, A. S. Alekseev, O. P. Arinin, A. A. Baydimirov, S. M. Berezin, E. V. Borisov, V. V. Bot, V. E. Bugakov, S. N. Dubyago, D. V. Zimkov, A. N. Kuznetsov, E. V. Leontyev, S. V. Mazyar, S. V. Martynenko, E. L. Mishenin, P. Y. Nelyubov, A. A. Plaksin, A. I. Ponomaryov, N. V. Reprintsev, S. A. Rodionov, E. S. Soldatov, D. V. Sukhoi, I. P. Tokarev, A. P. Tyutyunikov, A. V. Fateyev, I. V. Fayanov, D. V. Filippov, I. V. Khromenkov, D. V. Chibizov-Ivanov, I. N. Shanin, P. V. Shvaiko, convicted of crimes liability for which was mitigated by the Federal Law of 8 December 2003 “On Amendments to the Criminal Code of the Russian Federation”.

The ground for the consideration of the case is the discovered uncertainty of whether the provisions of Section 2, Article 10 of the Criminal Code of the Russian Federation, Section 2 of Article 3 of the Federal Law “On the Entry into Force of the Criminal Code of the Russian Federation” of 13 June 1996 (as amended by Federal Law No. 161-Φ3 of 27 December 1996), the Federal Law “On Amendments to the Criminal Code of the Russian Federation” of 8 December 2003, and Articles 396, 397, 399, 402–410, 413 and 415 of the Criminal Procedure Code of the Russian Federation challenged by the applicants are in conformity with the Constitution of the Russian Federation.

Having heard the report of Judge-Rapporteur V. G. Strekozov, statements by the parties, the expert opinion of A. E. Zhalinsky, PhD in Law, a statement of the expert Yu. A. Kostanov, PhD in Law, and a statement of the intervener Judge of the Supreme Court of the Russian Federation A. M. Brizitsky for the Supreme Court 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 Federal Law “On Amendments to the Criminal Code of the Russian Federation” of 8 December 2003 repealed certain provisions of the Criminal Code of the Russian Federation, defining the core and qualifying elements of offences, types of punishments, aggravating circumstances, and sentencing rules, and introduced other amendments and additions to the provisions of articles in the General and Special Parts of the Code.

Implying that the mentioned Federal Law, within the meaning of Article 54 (Section 2) of the Constitution of the Russian Federation, has retroactive effect regarding the abolition or mitigation of criminal liability and punishment for crimes, courts of general jurisdiction considering motions of citizens (applicants in the present case) for adjustment of their sentences and giving regard to each specific case, delivered decisions to re-qualify the convicted person’s

actions, to exclude certain qualifying elements of the offence from the judgment of conviction, to exclude indications of dangerous or especially dangerous recidivism in the actions of the convicted person from the judgment of conviction, and, accordingly, to change the regime of the correctional facility where the convicted person serves the sentence, or to exclude forfeiture of property from the judgment of conviction.

However, regardless of the significance of adjustments made to the judgments of conviction and the procedure in which they were made (judicial resolution of issues concerning the enforcement of sentences, cassation review, supervisory review, or reconsideration under newly discovered circumstances), the sentences imposed were either not reduced at all or were reduced, but not below the maximum sentence stipulated by the respective article of the Special part of the Criminal Code of the Russian Federation (as amended by the mentioned federal law). This was the case even when the previously imposed sentence was minimal or, pursuant to Article 64 of the Criminal Code of the Russian Federation, below the minimum penalty.

Delivering these decisions, the courts referred to Section 2, Article 3 of the Federal Law “On the Entry into Force of the Criminal Code of the Russian Federation”, and Section 2, Article 10 of the Criminal Code of the Russian Federation, permitting sentences (measures of punishment) previously imposed under the previous criminal law but not served yet to be adjusted in line with the new criminal law only in cases where the sentence imposed by the court was more severe than the maximum prescribed under the respective article of the Criminal Code of the Russian Federation (as amended in the new version of the criminal law).

1.1. According to Section 2, Article 3 of the Federal Law “On the Entry into Force of the Criminal Code of the Russian Federation”, sentences imposed on individuals under the previous criminal law but not served yet shall be adjusted under the Criminal Code of the Russian Federation when the imposed sentence is more severe than the maximum prescribed by the respective article of the Criminal Code of the Russian Federation.

In their complaints to the Constitutional Court of the Russian Federation, A. S. Alekseev, S. M. Berezin, E. V. Borisov, V. V. Bot, S. N. Dubyago, D. V. Zimkov, A. N. Kuznetsov, E. V. Leontyev, S. V. Mazyar, S. V. Martynenko, P. Y. Nelyubov, A. A. Plaksin, N. V. Reprintsev, E. S. Soldatov, I. P. Tokarev, A. P. Tyutyunik, A. V. Fateev, D. V. Filippov, I. V. Khromenkov, I. N. Shanin, and P. V. Shvaiko request to recognize these provision as violating their rights guaranteed by Article 19 (Section 1), 50 (Section 3), 54 (Section 2), 55 (Section 2) and 56 (Section 3) of the Constitution of the Russian Federation.

On the same grounds, A. K. Ayzhanov, Y. N. Aleksandrov, A. A. Arinin, A. A. Baydimirov, S. M. Berezin, V. V. Bot, V. E. Bugakov, E. V. Leontyev, E. L. Mishenin, A. I. Ponomaryov, S. A. Rodionov, D. V. Sukhikh, I. P. Tokarev, I. V. Fayanov, D. V. Filippov,

and D. V. Chibizov-Ivanov challenge the constitutionality of Section 2, Article 10 of the Criminal Code of the Russian Federation, which states that if the new criminal law reduces the sentence which is presently being served by the convicted person this sentence shall be reduced to the limits prescribed by the new criminal law.

In their complaints, A. K. Ayzhanov, Y. N. Aleksandrov, S. M. Berezin, V. V. Bot, V. E. Bugakov, A. I. Ponomarev, and I. V. Fayanov further challenge the constitutionality of certain provisions of Articles 396, 397 and 399 of the Criminal Procedure Code of the Russian Federation, which regulate judicial resolution of issues concerning enforcement of sentences, *inter alia* relief from punishment or its mitigation due to enactment of criminal law having retroactive effect; Articles 402–410, regulating procedure and grounds for review of judgments which have entered into legal force by supervisory instance courts; Articles 413 and 415 providing grounds and a procedure to re-open criminal proceedings under new or newly discovered circumstances.

The applicants claim that contrary to the requirements of the Constitution of the Russian Federation the mentioned provisions do not establish effective procedural mechanisms which, in case of enactment of new criminal law abolishing or mitigating criminal liability, allow to reduce the imposed sentence under the respective articles of the Special and General parts of the Criminal Code of the Russian Federation (as amended by this law) and not merely to the maximum limit stipulated by the articles of the Special part of the Criminal Code.

These arguments of the applicants demonstrate that, while they do not challenge the regulation of the mentioned articles of the Criminal Procedure Code of the Russian Federation and do not consider the issue of which court and at which stage of proceedings should decide to adjust the imposed sentence in line with the new criminal law, the applicants challenged their constitutionality only to the extent that these articles of the Criminal Procedure Code in conjunction with Section 2, Article 10 of the Criminal Code do not ensure mitigation of the sentence adequate to the newly enacted criminal law mitigating responsibility for the crime.

Moreover, O. P. Arinin claims that Federal Law “On Amendments to the Criminal Code of the Russian Federation” of 8 December 2003 does not conform as a whole to Articles 54 (Section 2) and 55 (Section 2) of the Constitution of the Russian Federation.

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.

1.2. Article 3 of the Federal Law “On the Entry into Force of the Criminal Code of the Russian Federation” of 13 June 1996 (and the mentioned Federal Law as a whole) is transitional

in its essence. It is intended to address only issues related to the application of the Criminal Code of the Russian Federation to criminal acts committed prior to its adoption, and it does not apply to legal relations concerning crimes committed after the Criminal Code of the RSFSR had lost its effect (as of 1 January 1997), and (or) after the adoption of laws amending the Criminal Code of the Russian Federation.

The applicants in the present case requested courts of general jurisdiction to adjust their judgments of conviction not in line with the Criminal Code of the Russian Federation in its original version, but rather in line with the Criminal Code of the Russian Federation as amended by the Federal Law of 8 December 2003 “On Amendments to the Criminal Code of the Russian Federation”. The judgments in the applicants’ cases referred to Section 2, Article 3 of the Federal Law “On the Entry into Force of the Criminal Code of the Russian Federation”, because its rules regarding mitigation of liability due to adoption of the Criminal Code of the Russian Federation were used in the law-enforcement practice as the basis for interpretation and application of Section 2, Article 10 of the Criminal Code of the Russian Federation, which was the actual legal basis for these judgments.

Consequently, the complaints challenging the constitutionality of Section 2, Article 3 of the Federal Law “On the Entry into Force of the Criminal Code of the Russian Federation” may not be recognized admissible and the proceedings on these complaints shall be discontinued under Subsection 2, Section 1, Article 43, Articles 68, 96 and 97 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”.

The complaint of O. P. Arinin may not be recognized admissible to the extent concerning the review of the constitutionality of the Federal Law “On Amendments to the Criminal Code of the Russian Federation” of 8 December 2003.

As is clear from the submitted materials, only Subsections 3, 15, 83 and 85, Article 1 of the mentioned Federal Law, were applied in the applicant’s case. Moreover, these provisions modify the notion of dangerous and especially dangerous recidivism and, consequently, change the regime of correctional facility where the sentence is to be served (Articles 18 and 58 of the Criminal Code of the Russian Federation), further they exclude reference to such qualifying element as “repeated” from the elements of crimes under Articles 158 and 162 of the Criminal Code of the Russian Federation, and forfeiture of property from the sanctions. None of these provisions put restrictions on the rights and freedoms of the applicant, but on the contrary they improve his status as compared to old regulation. The mentioned Federal Law has no provisions that could regulate the application of this Law to actions committed before its enactment or would preclude its application to the persons convicted of these acts (including O. P. Arinin) and thus mitigating their criminal liability and punishment.

Since Subsections 3, 15, 83 and 85, Article 1 of the Federal Law “On Amendments to the Criminal Code of the Russian Federation” of 8 December 2003 do not violate the constitutional rights of the applicant, and no other provisions of the Federal Law were applied or are to be applied in his case, the proceedings on his complaint to the extent concerning the review of the constitutionality of the mentioned federal law shall be discontinued.

1.3. Pursuant to Article 125 (Section 4) of the Constitution of the Russian Federation, Section 3, Article 74 and Article 97 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the Constitutional Court of the Russian Federation, upon complaints filed by the citizens regarding the violation of constitutional rights and freedoms by laws, which were applied or are to be applied in a particular case, delivers judgments only regarding issues raised in the complaints, and only to the extent the law is challenged. In the present case, pursuant to Sections 3 and 4, Article 3, and Section 2, Article 74 of the mentioned Federal Constitutional Law, the Constitutional Court of the Russian Federation considers exclusively the issues of law, and refrains from ascertaining facts or their examination, and does not review legality or validity of judgments in specific cases where the challenged statutory provisions were applied or were applicable.

Therefore, the subject matter for consideration by the Constitutional Court of the Russian Federation in the present case is Section 2, Article 10 of the Criminal Code of the Russian Federation, which, within the meaning attributed to it by the law-enforcement practice within the existing system of criminal procedure regulation, does not permit to reduce a sentence below the maximum limit prescribed by the Special Part of the Criminal Code of the Russian Federation, as amended by the new law, which mitigates criminal liability.

2. The Constitution of the Russian Federation declares the individual, his rights and freedoms to be the supreme value, and states that recognition, observance and protection of the rights and freedoms of man and citizen are the duty of the state (Article 2). Being directly applicable, the rights and freedoms of man and citizen determine the meaning, contents and enforcement of laws, actions of legislative and executive powers, local self-government, and they are ensured by administration of justice (Article 18 of the Constitution of the Russian Federation).

The implementation of these constitutional principles in the area of criminal law implies, on the one hand, the use of criminal law to protect citizens, their rights, freedoms and lawful interests from criminal trespasses, and, on the other hand, avoidance of excessive restrictions of the rights and freedoms in applying criminal law coercion measures. Consequently, the nature and content of measures imposed by criminal law should be predetermined not only by protection of constitutionally significant values, but also by commensurability of their effects

(including the effects on the person against whom these measures are applied) to the damage caused by the criminal acts. When the measures provided by the criminal law do not match social realities and weaken protection of constitutionally significant values, or, conversely, cause excessive use of the state coercion, the legislator, guided by these constitutional principles, must bring the legal provisions in conformity with new social realities.

This conclusion corresponds to the Universal Declaration of Human Rights, and in particular its Paragraph 2, Article 29, which stipulates that in the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Both imposition of criminal law prohibitions and punishments for their violation and decriminalization of criminal acts and mitigation of sentences must be predetermined by the constitutional fundamentals of the democratic rule of law state, including supremacy and direct effect of the Constitution of the Russian Federation, separation of powers, state protection of the rights and freedoms of man and citizen, fairness and equality, prohibition of arbitrariness, the requirement of proportionality and subordination of state bodies and officials enforcing criminal law imperatives (including judges) to the Constitution of the Russian Federation and laws (Article 1, Section 1, Article 2; Article 4, Section 2, Article 10, 19 and 45, Article 55, Section 3 of the Constitution of the Russian Federation).

2.1. In view of the obligation imposed by Article 21 of the Constitution of the Russian Federation on the state to protect human dignity, which (as is stated in the preamble to the International Covenant on Civil and Political Rights) is inherent of all members of the human family and is the basis of freedom, justice and all inalienable rights, it is evident that an individual in his relations with the state is not an object of state activity, but rather an equal entity, which may protect his rights by all means not prohibited by law (Judgment of the Constitutional Court of the Russian Federation No. 4-II of 3 May 1995 in the case concerning the review of the constitutionality of Articles 220<sup>1</sup> and 220<sup>2</sup> of the Criminal Code of the USSR).

Article 54 (Section 2) of the Constitution of the Russian Federation stipulates that nobody may be held liable for an action which was not considered a crime at the time of its commission, and thus it excludes the possibility of imposing liability on citizens for acts which were not and may not be considered dangerous for society at the time of the commission due to absence of the respective prohibition in the law. This is a guarantee of protecting human rights and human dignity in the area of criminal law and criminal procedural relations. By stipulating these rules the Constitution of the Russian Federation establishes necessary preconditions for certainty of

their legal status. However, relying on the general legal principles of humanism and proportionality of responsibility for the committed act to the actual social danger to the society, the Constitution of the Russian Federation states in the same Article 54 (Section 2) that if a new law abolishes or mitigates criminal liability the provision of this law shall be applied.

As the Constitutional Court of the Russian Federation indicated in Decision of No. 1-O of 16 January 2001 in the case concerning the review of the constitutionality of explanatory note 2 to Article 158 of the Criminal Code of the Russian Federation, the mentioned rules are the constitutional principles of law-enforcement for statutes establishing liability for offences and, due to the fact that the Constitution of the Russian Federation is directly applicable, they are mandatory both for the legislator and the law-enforcement authorities (including courts).

Article 54 (Section 2) of the Constitution of the Russian Federation corresponds to the provisions of Article 7 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 15 § 1 of the International Covenant on Civil and Political Rights prescribing that no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed; nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. However, unlike the Constitution of the Russian Federation, the Convention for the Protection of Human Rights and Fundamental Freedoms does not expressly define a rule imposing an obligation to apply a new law adopted after the commission of the offence if it in any manner abolishes or mitigates liability, and the International Covenant on Civil and Political Rights directly imposes only an obligation to give retroactive effect to the law establishing a lighter penalty.

2.2. Article 46 (Section 1) of the Constitution of the Russian Federation guarantees everyone the right to judicial protection of his rights and freedoms. While Articles 19 (Section 1), 46 (Section 2), 47 (Section 1), 50 (Section 3), 118 (Section 1) and 123 (Section 3) of the Constitution of the Russian Federation establish everyone's equality before the law and the court, everyone's right to consideration of his case by the court and judge in whose jurisdiction it is according to law, the right to appeal against and review of unfair judgments, administration of justice only by courts in judicial proceedings based on adversariness and equality of the parties. It follows from the mentioned constitutional provisions (taken in conjunction) that the constitutional right to judicial protection of the individual's rights as a basic, inalienable human right serving as a guarantee of exercise of all other rights and freedoms, implies not only the right to apply to court, but also the right to effective restoration of the violated rights and freedoms through administration of justice meeting the requirements of fairness.

In criminal proceedings the Constitution of the Russian Federation vests courts with the powers to establish the existence or absence of the accused person's guilt in the commission of crimes and to render respective judgments (Section 1, Article 49), to review judgments rendered by an inferior court instance (Section 3, Article 50) and to adjust previously rendered judgments in line with the new criminal law abolishing or mitigating liability for the crime (Section 2, Article 54). The exercise of these powers *inter alia* the rendering of respective court judgments as a manifestation of the administration of justice function must respect the requirements of legality, reasonableness and fairness imposed by the Constitution of the Russian Federation and federal laws on acts of the judiciary.

3. Pursuant to Article 10 of the Criminal Code of the Russian Federation, criminal statutes decriminalizing certain acts, mitigating punishment and otherwise improving the situation of the person who committed a crime shall have retroactive effect, i.e. they shall apply to persons who committed respective acts before the respective statutes entered into force, including persons who serve or have served their sentences but still have conviction records (Section 1). If the new criminal statute mitigates the punishment served by the person, the punishment shall be reduced within the limits prescribed by the new criminal statute (Section 2).

In the area of criminal legal regulation this Article specifies the principles of applying the new laws abolishing or mitigating the criminal liability, prescribed by the Constitution of the Russian Federation (Article 54, Section 2) and International Covenant on Civil and Political Rights (Article 15 § 1). These principles are defined as imperatives addressed primarily to the state represented by respective authorities which must secure implementation of state guarantees for the protection of the rights and freedoms of man and citizen stipulated by Article 45 (Section 1) of the Constitution of the Russian Federation and which shall decide on the liability imposed for certain offences.

The legislator adopting a law abolishing or mitigating criminal liability determines anew the character and degree of social danger of certain crimes and the legal status of the persons who commit them. Therefore, the legislator giving regard to constitutional obligation to extend the effect of these laws to previously committed acts may not fail to establish a mechanism for their retroactive effect. The law-enforcement authorities, including courts, may not deviate from its application when they adopt decisions, under the law, to relieve a particular person of criminal liability or mitigate the liability or punishment and formalize the change in the status of the persons concerned.

3.1. Neither Article 54 (Section 2) of the Constitution of the Russian Federation nor Article 15 § 1 of the International Covenant on Civil and Political Rights contain norms which permit to limit the effect of their imperatives depending on the types of an offence, categories of

persons who commit them, or any other circumstances. Likewise, within the literal meaning of Section 1, Article 10 of the Criminal Code of the Russian Federation, a law improving the situation of the person who committed a crime shall have retroactive effect and shall be applied in a particular case regardless of the stage of judicial proceedings when the issue of applying this statute must be resolved and regardless of the form in which such improvement is manifested, e.g. elimination of the qualifying elements of the crime, reduction of the minimum and (or) maximum limits of the respective article's sanction in the Special Part of the Criminal Code of the Russian Federation, changes in its General Part regarding the sentencing rules, or in any other way.

The same approach is valid for Section 2, Article 10 of the Criminal Code of the Russian Federation. The imperative to mitigate punishment prescribed by the judgment within the limits prescribed by the new criminal statute implies that the general sentencing rules according to which the punishment shall be mitigated within the limits prescribed by all the norms of the Criminal Code of the Russian Federation (not only the norms of the Special Part, but also the norms of the General Part) shall be applicable.

A restrictive construction of Section 1, Article 10 of the Criminal Code of the Russian Federation, permits reduction of the sentence for the convicted person only to the maximum limit of the sanction under the respective article of the Special Part of the Criminal Code of the Russian Federation. This construction used in the law-enforcement decisions on the criminal cases of the citizens, who are the applicants in the present case does not conform to the literal meaning of that norm and does not follow from the provisions of the Constitution of the Russian Federation which predetermine the contents and meaning of the mentioned Criminal Code's norm within the system of criminal regulation in force.

The mentioned approach to the understanding of Article 10 of the Criminal Code of the Russian Federation does not give due regard to the provided by law new legal qualification of certain actions as less grave crimes, lower limits of the punishment to be imposed, and softer sentencing rules. Ultimately this approach would lead to reconsideration of the degree of social danger of a certain action, the person who committed it and the circumstances mitigating or aggravating the punishment, in a manner unfavourable to the convicted person as compared to the previously adopted court decisions. It would not only restrict the convicted person's right to the application of the criminal statute mitigating the liability guaranteed under Article 54 (Section 2) of the Constitution of the Russian Federation, but also would cause definite detrimental impact (both formal and factual) on the status of the person concerned. Exceptionally evident this impermissible approach would be when the court adjusting the sentence in line with the new criminal law fails to consider that the sentence was previously under special rules of

punishment reduction (below the minimum mandatory limit prescribed by the sanction of the respective article; in consideration of mandatory mitigating circumstances; sentence imposed on a person who pleads guilty; when the jury considers that the defendant deserves leniency).

However, as the Constitutional Court of the Russian Federation mentioned in Judgment No. 5-Π of 11 May 2005 in the case concerning the review of constitutionality of Article 405 of the Criminal Procedure Code of the Russian Federation, during reconsideration of a judgment of conviction in force *reformatio in pejus* for the convicted person is not permitted unless the judgment is based on fundamental and crucial infringements. *Reformatio in pejus* is even less permissible when judgments are adjusted in line with the new criminal law which mitigates the liability for crimes, since it would distort the essence of these laws and the legislator's will.

3.2. The provision of Section 2, Article 10 of the Criminal Code of the Russian Federation, on reducing the sentence within the limits prescribed by the new criminal law in its systemic conjunction with Section 1 of the same Article implies that all the rules of the Criminal Code of the Russian Federation as amended by the new law shall be applied when the judgment is adjusted. This concerns both general and special sentencing rules *inter alia* the imposition of the sentence below the mandatory minimum prescribed by law provided that mitigating circumstances are present, and the imposition of the sentence in case of recidivism. In that way, the implementation of the principles of fairness (Preamble to the Constitution of the Russian Federation, Article 6 of the Criminal Code of the Russian Federation) and equality of everyone before the law and the court (Article 19 of the Constitution of the Russian Federation, Article 4 of the Criminal Code of the Russian Federation) is secured in criminal proceedings.

Otherwise, i.e. if Section 2, Article 10 of the Criminal Code of the Russian Federation, implied the use of only one rule (reducing the previously imposed sentence to the maximum limit of the sanction under the amended article of the Special Part of the Criminal Code of the Russian Federation), persons who are already serving a sentence would be placed in an unequal position as compared to persons sentenced under the new criminal law in force and with regard to the maximum and minimum limits of the respective article's sanction and circumstances indicated in the General Part of the Criminal Code.

4. The implementation of the principle enshrined in Article 54 (Section 2) of the Constitution of the Russian Federation and Article 10 of the Criminal Code of the Russian Federation, under which a criminal statute abolishing or mitigating liability has retroactive effect, may be secured if an appropriate procedural mechanism is created in order to determine in a specific case to which extent the new law mitigates the liability for the crime and to apply it respectively.

4.1. According to the criminal procedural legislation in force, a new law abolishing or mitigating liability for a crime and, therefore, having retroactive effect may be applied at any stage of criminal proceedings (from initiation of criminal investigation and to review of the decisions in force and execution of sentences).

The procedure of adjusting a sentence in force in line with the new criminal law is expressly regulated only for the stage of execution of sentences. In these cases the power to relieve of or mitigate the punishment is vested by the Criminal Procedure Code of the Russian Federation with the court at the place where the punishment is being served by the convicted person or at the place where the measures of compulsory medical treatment are being applied (Section 3, Article 396). The proceedings are initiated upon a motion of the convicted person (Subsection 2, Section 1, Article 399) and in the hearing the convicted person or his defence counsel may participate along with a representative of the correctional facility (Section 2, 3 and 4, Article 399).

Also the judgment in force may be adjusted in line with the new criminal law in supervisory review proceedings, which are administered, under the Criminal Procedure Code of the Russian Federation, by the respective supervisory court (Article 403) upon a supervisory request of the prosecutor or supervisory complaint of the convicted person, his defence counsel, or legal representative (Sections 402 и 404). After the hearing where the parties are present (Article 407), the judgment of conviction and subsequent decisions may be annulled or altered (Articles 408 and 410).

The Criminal Procedure Code of the Russian Federation does not exclude the possibility of adjusting the judgment of conviction and other judicial decisions in the criminal case in line with the new criminal law during proceedings for re-opening of the case under new or newly discovered circumstances (Article 413) by a superior court upon a motion by the President of the Supreme Court of the Russian Federation or a prosecutor's request (Articles 415, 416 and 417).

Regardless of the nature of the mentioned proceedings, within which the previously adopted judgment is adjusted in line with the criminal law abolishing or mitigating the liability for the crime, these procedures must secure the constitutional guarantees of judicial protection of the rights and freedoms of man and citizen.

4.2. Establishing everyone's right to judicial protection of his rights and freedoms, the Constitution of the Russian Federation implies that everyone shall be provided with equal access to justice complying with the requirements of fairness and administered by an independent and impartial court within adversarial proceedings ensuring equality of the parties.

Accordingly, under these constitutional principles the court considering cases on its docket shall be able to deliver decision relying on the legislation in force, the circumstances of

the specific case, the arguments of the persons participating in the proceedings, and their reasoning. The powers of a court as a judicial authority are restricted and the citizens' right to judicial protection is violated if the court is afforded only one possible course of action, namely reduction of the previously imposed punishment to the maximum limit established by the sanction of the respective article of the Special Part of the Criminal Code of the Russian Federation.

The norms of the Criminal Procedure Code of the Russian Federation, which define the court's powers to adjust the judgment of conviction in force and other judicial decisions in line with the criminal law having retroactive effect and abolishing or mitigating liability for a crime, do not impose any restrictions of this kind. Therefore they may not be considered as violating the constitutional rights and freedoms of citizens. However, nothing prevents the legislator from establishing a special procedure for adjusting these judicial acts in line with the new criminal law abolishing or mitigating the liability for a crime.

4.3. The imperative nature of the rule of Article 54 (Section 2) of the Constitution of the Russian Federation, which prescribes application of the new law when the liability for an offence is abolished or mitigated after it was committed, does not permit a court or another law-enforcement authority to have discretionary powers allowing it to ignore the effect of the new law in these cases. Therefore, the state which, under Article 2 of the Constitution of the Russian Federation, is obliged to recognize, observe and protect the rights and freedoms of man and citizen must establish a mechanism of adjusting previously rendered judgments irrespective of whether an interested person lodges a respective motion.

Therefore, the provision of the Criminal Procedure Code of the Russian Federation, according to which a judgment is adjusted in line with a law abolishing or mitigating liability by the court upon a motion of the convicted person (Subsection 2, Section 1, Article 399) may not be considered as exempting the authorized state bodies and their officials from the obligation to initiate these proceedings themselves. Such interpretation of the mentioned norms relies not only on the Constitution of the Russian Federation, which guarantees state protection of the rights and freedoms of man and citizen (Article 2 and Section 1, Article 45), but also on the legislation imposing on the prosecutor an obligation to supervise the lawfulness of execution of sentences and to take necessary actions to eliminate any violations (Articles 32 and 33 of the Federal Law "On the Prosecutors' Office of the Russian Federation"). The administration of correctional facilities as well is obliged to protect the rights, freedoms and lawful interests of convicted persons (Article 1 of the Execution of Criminal Sentences Code of the Russian Federation, Articles 1 and 13 of the Law of the Russian Federation "On Institutions and Bodies Executing Criminal Punishments in the Form of Deprivation of Liberty").

Concluding from the above and pursuant to Subsection 2, Section 1, Article 43, Article 68, Sections 1 and 2, Article 71, Articles 72, 75, 79, 86 and 100 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the Constitutional Court of the Russian Federation

h e l d :

1. To recognize the provision of Section 2, Article 10 of the Criminal Code of the Russian Federation, as conforming to the Constitution of the Russian Federation, because, within its constitutional legal meaning, it implies within the system of the legal procedure regulation in force that the punishment imposed on the convicted person must be reduced, due to adoption of a new criminal law mitigating the liability for the crime committed, within the limits prescribed by both the Special Part and General Part of the Criminal Code of the Russian Federation (as amended by this law).

The provision of Subsection 2, Section 1, Article 399 of the Criminal Procedure Code of the Russian Federation, within its constitutional interpretation, does not exempt the authorized state bodies and officials from the obligation to initiate, before the court, proceedings on adjusting the sentence in the criminal case in line with the new criminal law abolishing or mitigating the liability for the crime regardless of whether the convicted person submitted a respective motion.

Pursuant to Article 6 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the constitutional meaning of the mentioned statutory provisions revealed in the present Judgment is generally binding and precludes any other interpretation in the law-enforcement practice.

2. To discontinue the proceedings to the extent that they concern review of the constitutionality of Section 2, Article 3 of the Federal Law “On the Entry into Force of the Criminal Code of the Russian Federation” and the Federal Law “On Amendments to the Criminal Code of the Russian Federation” of 8 December 2003.

3. The criminal cases against A. K. Ayzhanov, Y. N. Aleksandrov, A. S. Alekseyev, O. P. Arinin, A. A. Baidimirov, S. M. Berezin, E. V. Borisov, V. V. Bot, V. E. Bugakov, S. N. Dubyago, D. V. Zimkov, A. N. Kuznetsov, E. V. Leontyev, S. V. Mazyar, S. V. Martynenko, E. L. Mishenin, P. Y. Nelyubov, A. A. Plaksin, A. I. Ponomaryov, N. V. Reprintsev, S. A. Rodionov, E. S. Soldatov, D. V. Sukhoi, I. P. Tokarev, A. P. Tyutyunikov, A. V. Fateyev, I. V. Fayanov, D. V. Filippov, I. V. Khromenkov, D. V. Chibizov-Ivanov, I. N. Shanin, P. V. Shvaiko are subject to consideration according to the established procedure in consideration of this Judgment if there are no other obstacles to it

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

5. 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.

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