

IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT  
OF THE RUSSIAN FEDERATION

Judgment

of 6 April 2006 No. 3-II

in the case concerning the review of the constitutionality of certain provisions of the Federal Constitutional Law “On Military Courts in the Russian Federation”, Federal Laws “On Jurors in Federal Courts of General Jurisdiction in the Russian Federation”, “On the Entry into Force of the Criminal Procedure Code of the Russian Federation” and of the Criminal Procedure Code of the Russian Federation upon a request of the President of the Chechen Republic, and in connection with a complaint of K. G. Tuburova and a request of the North Caucasus Circuit Military Court.

Moscow, 6 April 2006

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

in the attendance of attorney M. A. Musayev, representative of the President of the Chechen Republic; K. G. Tuburova and her representative, attorney L. A. Tikhomirova; Permanent Representative of the State Duma to the Constitutional Court of the Russian Federation Ye. B. Mizulina; Plenipotentiary Representative of the Council of the Federation to the Constitutional Court of the Russian Federation Yu. A. Sharandin; Plenipotentiary Representative of the President of the Russian Federation to the Constitutional Court of the Russian Federation M. V. Krotov,

pursuant to Article 125 (Sections 2 and 4) of the Constitution of the Russian Federation, Subsection 1 (a) and Subsection 3, Section 1, Sections 3 and 4 of Article 3, Subsection 3, Section 2 of Article 22, Articles 36, 74, 84, 85, 86, 96, 97, 99, 101, 102 and 104 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”,

in an open hearing, examined the constitutionality of certain provisions of the Federal Constitutional Law “On Military Courts in the Russian Federation”, of the Federal Laws “On Jurors in Federal Courts of General Jurisdiction in the Russian Federation”, “On the Entry into Force of the Criminal Procedure Code of the Russian Federation”, and the Criminal Procedure Code of the Russian Federation.

The reason for the consideration of the case is a request of the President of the Chechen Republic, a complaint of K. G. Tuburova and a request of the North Caucasus Circuit Military Court. The ground for the consideration of the case is the discovered uncertainty of whether the provisions challenged by the applicants are in conformity with the Constitution of the Russian Federation.

Having heard the report of Justice-Rapporteur Yu. M. Danilov, statements by the parties and their representatives, interventions by the representatives invited to the hearing: A. P. Shurygin, President of the Cassation Section, Supreme Court of the Russian Federation, for the Supreme Court of the Russian Federation, A. N. Savenkov, Deputy Prosecutor General of the Russian Federation, Chief Military Prosecutor of the Russian Federation, for the Prosecutor General of the Russian Federation, and having considered written submissions and other materials, the Constitutional Court of the Russian Federation

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

1. In his request to the Constitutional Court of the Russian Federation, the President of the Chechen Republic challenges the constitutionality of Section 2, Article 1; Subsection 2, Section 1 of Article 7; Section 1, Article 13; Section 1, Article 14; Subsection 2, Section 1 of Article 15, and Article 28 of the Federal Constitutional Law “On Military Courts in the Russian Federation” of 23 June 1999; Section 4, Article 4 of the Federal Law “On Jurors in Federal Courts of General Jurisdiction in the Russian Federation” of 20 August 2004; Subsection 5, Section 1, Article 8 of the Federal Law “On the Entry into Force of the Criminal Procedure Code of the Russian Federation” of 18 December 2001 (as amended by Federal Law No. 181-Φ3 of 27 December 2002); Subsection 2, Section 2 of Article 30; Sections 3 and 6 of Article 31; Article 32 of the Criminal Procedure Code of the Russian Federation.

According to the applicant, these provisions as applied in specific cases by the North Caucasus Circuit Military Court violate the right to judicial protection, participation in administration of justice, and equal access to justice guaranteed by the Constitution of the Russian Federation. The mentioned provisions do not conform to Articles 19, 32, 46, 47 and 55 of the Constitution of the Russian Federation to the extent that they restrict, until 1 January 2007, compiling of a jury pool by the supreme executive authority of state power of the Chechen Republic for the North Caucasus Circuit Military Court operating in its territory; and allow examination of criminal cases against military servicemen charged with crimes committed within the territory of the Chechen Republic in jury trials, where a compiled jury pool does not include citizens permanently residing in the Chechen Republic. In addition, the challenged provisions violate the principle of equality in the exercise of the constitutional right to judicial protection

(Articles 19 and 46 of the Constitution of the Russian Federation) since citizens, who are not military servicemen, charged with committing a crime in the territory of the Chechen Republic do not have the right to have their case examined in a jury trial.

The constitutionality of the same provisions of the Federal Constitutional Law “On Military Courts in the Russian Federation” and Federal Laws “On Jurors in Federal Courts of General Jurisdiction in the Russian Federation” and “On the Entry into Force of the Criminal Procedure Code of the Russian Federation” is challenged in the complaint of K. G. Tuburova, who was recognized to be a victim in a criminal case under consideration of the North Caucasus Circuit Military Court where several citizens who are military servicemen have been charged with specially grave crimes committed in the territory of the Chechen Republic.

As follows from the complaint and statements of K. G. Tuburova and her representative at the hearing in the Constitutional Court of the Russian Federation, these provisions are challenged only to the extent that they, in the applicant’s opinion, deprive citizens residing in the Chechen Republic of an opportunity to be included in a jury pool and consequently of the right to participate in administration of justice (Section 5, Article 32 of the Constitution of the Russian Federation), and permit to form a panel of jurors for consideration of cases concerning crimes committed by military servicemen, relying on a jury pool from other regions. Such procedure is inconsistent with the requirement of objectivity of jurors and violates the victims’ rights to judicial protection and equal access to justice guaranteed by Articles 19, 46, 52 and 55 of the Constitution of the Russian Federation.

In its request to the Constitutional Court of the Russian Federation, the North Caucasus Circuit Military Court whose jurisdiction covers the said criminal case challenges the constitutionality of Subsection 5, Section 1, Article 8 of the Federal Law “On the Entry into Force of the Criminal Procedure Code”, and Subsection 2, Section 2, Article 30 of the Criminal Procedure Code of the Russian Federation. In the applicant’s opinion, these provisions are inconsistent with Articles 17 (Section 1), 19 (Section 1), 32 (Section 5), 47 (Section 1) and 52 of the Constitution of the Russian Federation insofar as they preclude, until 1 January 2007, consideration of criminal cases concerning crimes committed in the territory of the Chechen Republic in a trial by a jury composed of residents of the Republic and thus deprive victims of the right to object to a jury trial when it is impossible to form a panel of jurors from citizens residing in the territory where the crime was committed, and consequently deprives the court of the power to consider such objections.

As long as the request of the President of the Chechen Republic, the complaint of K. G. Tuburova and the request of the North Caucasus Circuit Military Court essentially concern the same subject matter, i.e. normative regulation of military courts’ consideration of specially

grave crimes against life in a jury trial, and consideration by the North Caucasus Circuit Court of such crimes committed in the territory of the Chechen Republic was the direct reason for all the applications, the Constitutional Court of the Russian Federation, pursuant to Article 48 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, is permitted to consider these applications together.

1.1. Pursuant to Section 3, Article 74 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the Constitutional Court of the Russian Federation adopts judgments only on the subject matter raised in an application and only with regard to the part of an act that is been challenged by the applicant. Taking a decision, the Constitutional Court of the Russian Federation is not bound by the grounds and arguments stated in an application. However, it does not mean that there is no need for the applicant to indicate why he considers the challenged norm unconstitutional. Pursuant to Section 2, Article 37 of this Federal Constitutional Law, the applicant should clarify where he finds uncertainty as to the consistency of the norm he challenges with the Constitution of the Russian Federation (Subsection 7) and provide legal grounds of his opinion on the point raised (Subsection 8).

The provisions of the Federal Constitutional Law “On Military Courts in the Russian Federation”, the constitutionality of which is challenged by the applicants in this case, determine that military courts shall be created according to the territorial principle at the place of deployment of military units and departments of the Armed Forces of the Russian Federation, other troops, military formations and bodies (Section 2, Article 1). Jurisdiction of military courts shall cover cases concerning crimes which military servicemen and citizens called for reserve military training are accused of (Subsection 2, Section 1, Article 7). The circuit (naval) military court operates in the territory of one or several subjects of the Russian Federation where military units and departments of the Armed Forces of the Russian Federation, other troops, military formations and bodies are deployed (Section 1, Article 13) and deals, in first instance, with cases concerning crimes that may be punished by deprivation of liberty for over 15 years, life imprisonment, or death (Section 1, Article 14). The circuit (naval) military court of first instance shall consider criminal cases falling under its jurisdiction, including consideration by a panel of three judges or a judge and a panel of jurors (Subsection 2, Section 1 of Article 15). The status of military court jurors as well as the procedure for involving citizens of the Russian Federation in the administration of justice shall be established by federal constitutional laws and federal laws (Article 28).

The challenged provisions of the Criminal Procedure Code of the Russian Federation stipulate that criminal cases falling under the jurisdiction of a supreme court of a republic, territory or region court, court of a city of federal significance, court of an autonomous region

and autonomous and a circuit (naval) military court, upon a motion of the accused, shall be considered by a judge of an appropriate federal court of general jurisdiction and a panel of twelve jurors. These provisions also determine which criminal cases fall under the jurisdiction of these courts (Subsection 2, Section 2 of Article 30; Sections 3 and 6 of Article 31).

Regarding the content and place in the system of legislative regulation, the said norms cannot serve as a legal basis for resolving the issue whose constitutionality is challenged by the applicants, i.e. whether consideration by the North Caucasus Circuit Military Court of criminal cases concerning specially grave crimes against life committed in the territory of the Chechen Republic in a jury trial is permissible when citizens permanently residing in it are not included in the panel of jurors. Accordingly, regarding the scope of these relations, there is no uncertainty as to the constitutionality of these norms as a ground for consideration of the case by the Constitutional Court of the Russian Federation (Section 2, Article 36 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”).

As to issues regulated directly by Section 2, Article 1; Subsection 2, Section 1 of Article 7; Section 1, Article 13; Section 1, Article 14; Subsection 2, Section 1 of Article 15, and Article 28 of the Federal Constitutional Law “On Military Courts in the Russian Federation” and Subsection 2, Section 2 of Article 30 and Sections 3 and 6 of Article 31 of the Criminal Procedure Code of the Russian Federation, neither the applicants nor their representatives raised them at the hearing in the Constitutional Court of the Russian Federation. Accordingly, the legal grounds as regards the unconstitutionality of legal regulation effected by these norms were not submitted to the Constitutional Court of the Russian Federation. Under such circumstances, the said norms of the Federal Constitutional Law “On Military Courts in the Russian Federation” and the Criminal Procedure Code of the Russian Federation, pursuant to Section 2, Article 36; Subsection 8, Section 2 of Article 37; Article 68 and Section 3 of Article 74 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, may not be a subject matter for consideration by the Constitutional Court of the Russian Federation, and the proceedings in this part shall be discontinued.

1.2. Consequently, the subject matter of consideration by the Constitutional Court of the Russian Federation in this case is the interrelated normative provisions of Article 32 of the Criminal Procedure Code of the Russian Federation establishing court jurisdiction in criminal cases at the venue of the crime and Section 4, Article 4 of the Federal Law “On Jurors in Federal Courts of General Jurisdiction in the Russian Federation”, which prescribes that general and reserve jury pools for circuit (naval) military courts are compiled by supreme executive authorities of state power of the subjects of the Russian Federation on a territorial basis upon a proposal by the president of the respective military court. Also the subject matter of

consideration in the present case is Subsection 5, Section 1 of Article 8 of the Federal Law “On the Entry into Force of the Criminal Procedure Code of the Russian Federation” stipulating, in Subsection 2, Section 2 of Article 30 of the Criminal Procedure Code of the Russian Federation, that consideration of a criminal case by a first instance court composed of a judge of a federal court of general jurisdiction and a panel of twelve jurors shall be in effect in the Chechen Republic as of 1 January 2007. It shall be reviewed to the extent that it permits consideration of criminal cases on charges of especially grave crimes against life committed in the territory of a subject of the Russian Federation by circuit military courts in jury trials, when these cases fall under their jurisdiction. According to these provisions the jury for such trials is not going to include citizens residing in the territory of this subject of the Russian Federation, because operation of a jury trial in this subject is postponed and for that reason jury pools are not compiled.

2. The Constitution of the Russian Federation guarantees everyone judicial protection of his rights and freedoms (Section 1, Article 46). The right to judicial protection belongs to fundamental inalienable human rights and freedoms, and in the Russian Federation it is recognized and guaranteed in compliance with the generally recognized principles and norms of international law and in accordance with the Constitution of the Russian Federation (Sections 1 and 2, Article 17).

This constitutional right also implies the existence of the right of access to justice, which should comply with the requirements of fairness and ensure efficient restoration of rights and the right to an independent and impartial tribunal as an indispensable condition for fair administration of justice. Pursuant to the Constitution of the Russian Federation, justice in the Russian Federation shall be administered only by the court (Section 1, Article 118); everyone shall be equal before the law and the court (Section 1, Article 19); judges shall be independent and be bound only by the Constitution of the Russian Federation and federal law (Section 1, Article 120); judicial proceedings shall rest upon adversarial trial and equality of the parties (Section 3, Article 123); a court shall be either created pursuant to a direct command of the Constitution (Articles 118, 125–127) or established on the basis of federal constitutional law (Section 3, Article 128); in cases prescribed by federal law, justice shall be administered in a jury trial (Section 4, Article 123). Justice should be administered only by the court and by the judge who have jurisdiction over the case according to law. Pursuant to Article 47 (Section 1) of the Constitution of the Russian Federation, no one may be deprived of the right to have his case considered by the court and by the judge in whose jurisdiction the case is according to law.

The principles of unrestricted access to justice and a lawful court are recognized by the international community as fundamental. Pursuant to Article 10 of the Universal Declaration on

Human Rights, everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations and of any criminal charges against him. Reinforcing these provisions, the Convention for the Protection of Human Rights and Fundamental Freedoms (Article 6 § 1) and the International Covenant on Civil and Political Rights (Article 14 § 1) established that everyone shall be entitled, in determination of any criminal charge against him, to a fair and public hearing within a reasonable time by an independent, impartial and competent tribunal established by law, with observance of the principle of equality of all persons before the court.

The rights of access to justice and to a lawful court guaranteed by the Constitution of the Russian Federation and the mentioned international legal instruments, which pursuant to Article 15 (Section 4) of the Constitution of the Russian Federation form an integral part of the legal system of the Russian Federation, by their nature require legislative regulation. Exercising such regulation the federal legislator has a certain degree of discretion which, however, does not relieve it of its duty to observe the requirement of a reasonable proportionality, arising from the Constitution of the Russian Federation, between the means used and the aims pursued, not to allow restriction of the mentioned rights that affects their very essence.

When specifying the provisions of Articles 46, 47 (Section 1) and 118 (Section 1) of the Constitution of the Russian Federation, the federal legislator, within its competence enshrined in Articles 71 (Subsections (a), (d), (n)) and 76 (Section 1), establishes a procedure for creating courts, vesting judges with powers, rules of substantive, territorial, and personal jurisdiction; and within criminal law it determines the composition of a court, *inter alia* involving a jury which has the power to consider certain categories of criminal cases. It also specifies circumstances precluding participation of particular judges and jurors in consideration of a case.

To ensure certainty as to the jurisdiction and powers of specific courts in criminal cases and in order to preclude arbitrary interpretation of respective norms and, consequently, their arbitrary application in judicial practice, the law must establish criteria that shall, in normative form (as general rules), determine the court where a certain case is to be considered. This would allow the court (judge), parties and other participants in the proceedings to avoid uncertainty in this issue, which otherwise would have to be eliminated by a law-enforcement decision, and, consequently, establish jurisdiction over a case not on the basis of law (Judgment of the Constitutional Court of the Russian Federation No. 9-II of 16 March 1998 in the case concerning the review of the constitutionality of Article 44 of the Criminal Procedure Code of the RSFSR and Article 123 of the Civil Procedure Code of the RSFSR).

3. The constitutional meaning of the provisions of Article 32 of the Criminal Procedure Code of the Russian Federation, Section 4, Article 4 of the Federal Law “On Jurors in Federal

Courts of General Jurisdiction in the Russian Federation”, and Subsection 5, Section 1, Article 8, of the Federal Law “On the Entry into Force of the Criminal Procedure Code” cannot be determined without considering their place in the system of legislation in force regulating relations on the exercise of the right to a lawful court, when resolving the issue of whether a certain case shall be considered in a jury trial (in the present case a jury trial in a circuit military court).

The constitutional interpretation of a normative act or of its individual provision, which is reviewed in constitutional proceedings, falls under the competence of the Constitutional Court of the Russian Federation within the meaning of Article 125 of the Constitution of the Russian Federation taken in conjunction with Articles 4 (Section 2) and 15 (Section 1) thereof, and the provisions of Article 3; Section 2, Article 36; Section 2, Article 74; Articles 86 and 101 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”. Resolving a case and establishing conformity of the challenged act to the Constitution of the Russian Federation (also within the content of the norms), the Constitutional Court of the Russian Federation ensures determination of the constitutional meaning of the law in force so as to preclude its enforcement and, consequently, its interpretation in a meaning inconsistent with the constitutional norms.

This conclusion articulated by the Constitutional Court of the Russian Federation in its Judgment No. 1-II of 25 January 2001 in the case concerning the review of the constitutionality of Subsection 2, Article 1070 of the Civil Code of the Russian Federation arises out of the following legal opinion expressed in Judgment No. 5-II of 28 March 2000 in the case concerning the review of the constitutionality of the provision of Article 5 of the Russian Federation Law “On the Value Added Tax” and repeatedly confirmed in other decisions.

Pursuant to Article 120 of the Constitution of the Russian Federation, a court of general jurisdiction resolving, on its own, the issue of whether a certain norm is to be applied in a case under consideration, elucidates its meaning and its relation to a specific fact, i.e. performs causal interpretation. At the same time, the constitutional interpretation of provisions to be applied should be ensured in judicial practice. Therefore, pursuant to the requirements of Article 101 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, a court considering a case in any instance and arriving at the conclusion about non-compliance of the law with the Constitution of the Russian Federation shall apply to the Constitutional Court of the Russian Federation with a request to review its constitutionality.

The Constitutional Court of the Russian Federation, in resolving cases concerning the constitutionality of an act pursuant to the requirements of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, rules on the case considering not only the

literal meaning of the act under review, but also the meaning acquired in the official and other interpretation or in the existing law-enforcement practice, and relying on its place within the hierarchy of legal acts.

As follows from Articles 74, 84, 85, 96, 97, 101 and 102 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, in conjunction with Sections 2 and 3 of Article 3, Articles 6, 36 and 86, the Constitutional Court of the Russian Federation reviews the constitutionality of an act on the basis of elucidation of the meaning of the act under review, so as to preclude its enforcement and, consequently, its interpretation within a meaning inconsistent with the constitutional norms. Therefore, it is the Constitutional Court of the Russian Federation that resolves the issue of interpreting legal norms while reviewing their conformity to the Constitution of the Russian Federation. In this case the interpretation it gives shall be generally binding.

4. Pursuant to Article 20 (Section 2) of the Constitution of the Russian Federation, the person accused of an especially grave crime against life, for which federal law provides an opportunity of the capital punishment as an exceptional measure of punishment, should be granted the right to have his case considered in a jury trial. In such cases, as follows from the mentioned norm, in conjunction with Articles 18, 20 (Section 1) and 46 (Section 1) of the Constitution of the Russian Federation, the right of the accused to a jury trial represents a special procedural guarantee of judicial protection of everyone’s right to life directly established by the Constitution of the Russian Federation. It should be ensured on equal grounds and to an equal degree for all persons accused of committing such crimes, regardless of the venue of the crime, territorial or any other jurisdiction in criminal cases established by federal law, and other circumstances.

The mentioned legal opinion is articulated by the Constitutional Court of the Russian Federation in its Judgment No. 3-II of 2 February 1999 in the case concerning the review of the constitutionality of the provisions of Articles 41 and 42 of the Criminal Procedure Code of the RSFSR; Subsections 1 and 2 of the Decree of the Supreme Soviet of the Russian Federation “On a Procedure for Entry into Force of the Law of the Russian Federation ‘On Amendments to the RSFSR Law ‘On the Judicial System in the RSFSR’, Criminal Procedure Code of the RSFSR, Criminal Code of the RSFSR, and Administrative Offences Code of the RSFSR’”. By the date of consideration of this case, jury trials were formed only in a few subjects of the Russian Federation, and the Constitutional Court of the Russian Federation proposed to the Federal Assembly to introduce legislative amendments to ensure that within the Russian Federation everyone charged with a crime for which death penalty may be imposed as a measure of punishment, has an opportunity to exercise his right to have his case considered in a jury trial.

Having held that prior to the entry of the respective federal law into force death penalty as a measure of punishment may not be imposed, the Constitutional Court of the Russian Federation also stated that the absence of such law shall not preclude consideration of these cases by a different composition of the court in territories where jury trials are not created yet.

The regulation exercised by the Federal Assembly in enforcing Judgment of the Constitutional Court of the Russian Federation No. 3-II of 2 February 1999 prescribes gradual introduction of jury trials in the territory of the Russian Federation. The date of introduction of jury trials in the Chechen Republic was scheduled on 1 January 2007. Thus prior to this date, pursuant to Paragraph 1, Subsection 6, Section 2, “Concluding and Transitional Provisions”. of the Constitution of the Russian Federation, the Supreme Court of the Chechen Republic considers cases concerning crimes for which law stipulates death penalty as a measure of punishment. In these cases the court operates according to previously established procedure for non-jury trials, with a prohibition to impose death penalty on the convicted person.

The fact that, notwithstanding a considerable period of time after the Constitution of the Russian Federation entered into force, the creation of a jury trial in the Russian Federation is not completed yet may not be in itself considered a violation of the requirements of the Constitution of the Russian Federation. In particular, Subsection 5, Section 1, Article 8 of the Federal Law “On the Entry into Force of the Criminal Procedure Code of the Russian Federation”, stipulating that the date of introduction of the jury trial in the Chechen Republic is 1 January 2007, does not contradict the constitutional requirements. This restriction of the right guaranteed by Article 32 (Section 5) of the Constitution of the Russian Federation to participate in administration of justice (in the present case as a juror) is temporary and is predetermined both by circumstances of organisational and logistical nature and by the need to create conditions ensuring impartiality and objectivity of jury trials. Under Article 55 (Section 3) of the Constitution of the Russian Federation, a delay in exercising this right is not an impermissible restriction of the right to a lawful court since for crimes mentioned in Article 20 (Section 2) of the Constitution another composition of a court prescribed by law may be considered a lawful court under Article 47 (Section 1) (provided that death penalty may not be imposed).

Consequently, Subsection 5, Section 1, Article 8 of the Federal Law “On the Entry into Force of the Criminal Procedure Code of the Russian Federation”, pursuant to which Subsection 2, Section 2, Article 30 of the Criminal Procedure Code of the Russian Federation, enters into force and introduces the jury trial in the Chechen Republic on 1 January 2007, does not contradict the Constitution of the Russian Federation. The respective restrictions within the system of legal regulation in force are predetermined by gradual introduction of jury trials in the Russian Federation, they are temporary, and, consequently, cases concerning especially grave

crimes against life mentioned in Article 20 (Section 2) of the Constitution of the Russian Federation may be considered by a composition of the court other than a professional judge and a jury, provided that this composition of the court is prohibited to impose death penalty.

5. While specifying the principle of a lawful (due) court stemming from Articles 46, 47 (Section 1), and 118 (Sections 1 and 3) of the Constitution of the Russian Federation, the legislator has established substantive and territorial jurisdiction in criminal cases in the Criminal Procedure Code of the Russian Federation. As a general rule, a criminal case shall be considered at the venue of a crime by a court authorised to consider cases of the respective category.

5.1. Cases concerning crimes committed by military servicemen are considered by military courts. Within the meaning of the mentioned articles of the Constitution of the Russian Federation, in conjunction with the provisions of the Federal Constitutional Law “On Military Courts in the Russian Federation”, military courts may not be considered extraordinary courts. Like any other specialised courts, they operate within the system of courts of general jurisdiction and consider cases of a certain category. The principles of their operation, scope of powers and their exercise, rules of procedure in these courts essentially do not diverge from the general procedure and are characterised only by enhanced specialisation aimed at comprehensive and qualified consideration of a certain category of highly specific cases. These traits are inherent to specialised courts in contemporary democratic rule of law states.

The Federal Constitutional Law “On Military Courts in the Russian Federation”, which defines the substantive jurisdiction of military courts, has established that cases concerning crimes committed by military servicemen for which death penalty may be imposed shall be considered in the first instance by circuit military (naval) courts (Article 14). Pursuant to Article 13 of the mentioned Federal Constitutional Law, these courts operate within one or several subjects of the Russian Federation where military units and departments of the Armed Forces, other troops, military formations and bodies are deployed.

5.2. Within the meaning of Articles 31 and 32 of the Criminal Procedure Code of the Russian Federation, the venue of a crime is part of the territory of the Russian Federation under jurisdiction of a court of an appropriate level. Cases concerning especially grave crimes against life mentioned in Article 20 (Section 2) of the Constitution of the Russian Federation fall under the jurisdiction of the supreme court of a republic, a territorial or regional court, a court in a city of federal significance, a court of an autonomous region, and a court of an autonomous area. As follows from Section 3, Article 31 of the Criminal Procedure Code of the Russian Federation, in conjunction with Article 65 of the Constitution of the Russian Federation, the venue of the crime for these cases is the territory of a republic, territory, region, city of federal significance, autonomous region or autonomous area within the Russian Federation.

Pursuant to Section 1, Article 14 of the Federal Constitutional Law “On Military Courts in the Russian Federation”, and Section 6, Article 31 of the Criminal Procedure Code of the Russian Federation, circuit military courts are equal to the mentioned federal courts in terms of the powers to consider criminal cases concerning especially grave crimes against life. Also, there are no special normative grounds to determine the venue of a crime committed in the territory of the Russian Federation, which distinguish the jurisdiction of circuit military courts from other courts of general jurisdiction of the same level. Within the meaning of Articles 31 and 32 of the Criminal Procedure Code of the Russian Federation, in conjunction with Section 2, Article 1, Article 3, Section 3, Article 7, Articles 13 and 14 of the Federal Constitutional Law “On Military Courts of the Russian Federation”, the venue of a crime under the jurisdiction of a circuit military court is the territory of a respective subject of the Russian Federation irrespective of whether the jurisdiction of this court covers one or several subjects of the Russian Federation.

Any other interpretation of the mentioned provisions could result in diverging determination of the venue of a crime depending on which court (military or other court of general jurisdiction) would consider the case concerning these crimes. This would lead to violation of Articles 19, 46 (Section 1) and 47 (Section 1) of the Constitution of the Russian Federation by creating inequality of the status of military servicemen and persons who do not serve in the military. In terms of the right to be tried by a jury they would have be unequal in the scope of persons from whom a panel of jurors is composed.

5.3. Cases concerning especially grave crimes against life mentioned in Article 20 (Section 2) of the Constitution of the Russian Federation, upon a motion of the accused, shall be considered in a jury trial by the supreme court of a republic, a territorial or regional court, a court in a city of federal significance, a court of an autonomous region and a court of an autonomous area, and by a circuit military (naval) court.

Legal regulation ensuring the right of citizens to a lawful court in consideration of criminal cases by a jury has its specificity predetermined primarily by the nature of such trial and specificity of proceedings. The jurors are under no obligation to give reasons for their decision, including decision on the core issues of a criminal case, i.e. whether the guilt of the accused is proven or not. Moreover, jurors as non-professional judges mainly rely on their personal experience and the idea of justice shaped by the society they belong to.

In this respect, the jurors’ personal characteristics, absence of interest in the outcome of the case, objectivity, independence from the opinions and will of other persons are of special significance. The law establishes procedures to ensure participation of citizens in a panel of jurors and provides for special guarantees of their impartiality (Article 3 of the Federal Law “On

Jurors in Federal Courts of General Jurisdiction in the Russian Federation”); Chapter 42 of the Criminal Procedure Code of the Russian Federation).

Prospective jurors are selected from the general and reserve jury pools available to the court; these lists are compiled by the supreme executive bodies of state power of a subject of the Russian Federation from lists submitted by executive bodies of municipal entities. They include citizens permanently residing in the territory of a given subject of the Russian Federation (Section 1, Article 326 of the Criminal Procedure Code of the Russian Federation, Section 1, Article 4 of the Federal Law “On Jurors in Federal Courts of General Jurisdiction in the Russian Federation”). A jury pool for circuit military (naval) courts is compiled upon a request of the president of a respective military court by the supreme executive bodies of state power in subjects of the Russian Federation relying on the principle of territoriality (Section 4, Article 4 of the Federal Law “On Jurors in Federal Courts of General Jurisdiction in the Russian Federation”).

Since the legal regulation in force does not provide for special regulation of territorial jurisdiction of military courts over criminal cases, it is necessary to give regard to the general principles of territorial jurisdiction over criminal cases considered by a jury and to compile separate jury pools for circuit military courts for each subject of the Russian Federation under its jurisdiction. A panel of jurors for a respective criminal case should be made of citizens permanently residing in the territory of a subject of the Russian Federation where the crime was committed.

The selection of jurors which for some reason excludes citizens permanently residing in the territory of a subject of the Russian Federation under the jurisdiction of a respective circuit military court and at the venue of the crime would create a risk of arbitrary formation of a panel of jurors considering a specific case and consequently would fail to ensure fair consideration of the case by an impartial court established according to law. This right is guaranteed by Articles 47 (Section 1) and 118 (Section 1) of the Constitution of the Russian Federation; Article 6 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms; Article 14 § 1 of the International Covenant on Civil and Political Rights, and Article 10 of the Universal Declaration of Human Rights.

Apart from the rights of the accused and other parties to criminal proceedings, jurisdictional rules for criminal cases and rules of forming a panel of jurors are meant to secure the right of citizens to participate in administration of justice, which is guaranteed by the Constitution of the Russian Federation. This right is exercised *inter alia* by citizens acting as jurors and is aimed at protecting the interests of society and the state so that a criminal case, for the sake of general and special prevention, is considered as a general rule by the court at the

venue of the crime. Yet, when a circuit military court having jurisdiction over several subjects of the Russian Federation forms a panel of jurors for consideration of a case concerning a crime committed in one of these subjects of the Russian Federation, while a jury pool is compiled in another subject of the Russian Federation (contrary to the general rules of territorial jurisdiction in criminal cases), it is impossible to achieve fair representation of people as a necessary precondition for a lawful composition of the panel of jurors. Moreover, since there are still no jury trials in the Chechen Republic, this approach would lead to inequality of citizens, who committed especially grave crimes against life in its territory, and specifically inequality before the criminal law and criminal procedure law and, consequently, before the court on the basis of performing (or not) military service.

Therefore, guarantees of everyone's right to judicial protection and to a lawful court, and the citizen's constitutional right to participate in administration of justice as jurors guaranteed by the Constitution of the Russian Federation would be violated. It would be inconsistent with the legislator's authentic will expressed in the statutory provisions under review in the present case and with the legal opinions articulated by the Constitutional Court of the Russian Federation in Judgment No. 3-II of 2 February 1999 on the basis of Articles 19, 20 (Section 2), 32 (Section 5), 46, 47 (Section 1), 55 (Section 3), 118 and 123 (Section 4) of the Constitution of the Russian Federation. It would be impossible to strike a balance of constitutionally protected values, which include in the present case the right of the accused to a jury trial and the right of citizens residing in the Chechen Republic to participate in administration of justice as jurors, on the one hand, and the principle of equality before the law and the court of persons who committed especially grave crimes against life in the territory of the Chechen Republic (military servicemen and civilians), on the other.

Accordingly, Article 32 of the Criminal Procedure Code of the Russian Federation, Section 4, Article 4 of the Federal Law "On Jurors in Federal Courts of General Jurisdiction in the Russian Federation", and Subsection 5, Section 1, Article 8 of the Federal Law "On the Entry into Force of the Criminal Procedure Code of the Russian Federation" in their systemic unity and in conjunction with the mentioned provisions of the Constitution of the Russian Federation, do not permit consideration of criminal cases on especially grave crimes against life by a circuit military court in a jury trial when the jury does not include citizens permanently residing in the territory of the subject of the Russian Federation where the crime was committed. These norms imply that a panel of jurors shall be formed of citizens permanently residing in the territory of the subject of the Russian Federation where the crime was committed and the panel shall be formed out of general and reserve jury pools. When it is impossible to form a panel of jurors in this manner, the respective criminal cases shall be considered by a different composition of the

circuit military court, prescribed by law for non-jury trials, and death penalty may not be imposed as a sentence.

However, in determining military courts' jurisdiction over criminal cases nothing prevents the federal legislator from establishing different rules for compiling jury pools in a manner securing objectivity of jurors and from prescribing a procedure for operation of a panel of jurors in circuit military courts, provided that due regard is given to the requirements of the Constitution of the Russian Federation and the present Judgment.

Concluding from the above and pursuant to Article 6; Subsection 2, Section 1 of Article 43; Article 68; Sections 1 and 2 of Article 71; Articles 72, 75, 86, 87, 99, 100 and 104 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", the Constitutional Court of the Russian Federation

h e l d :

1. To recognize Subsection 5, Section 1, Article 8 of the Federal Law "On the Entry into Force of the Criminal Procedure Code of the Russian Federation" (as amended by Federal Law No. 181-Φ3 of 27 December 2002), pursuant to which Subsection 2, Section 2, Article 30 of the Criminal Procedure Code of the Russian Federation, prescribing consideration of criminal cases in jury trials enters into force in the Chechen Republic on 1 January 2007, as conforming to the Constitution of the Russian Federation in the system of the legal regulation in force.

2. To recognize, as conforming to the Constitution of the Russian Federation, the interrelated provisions of Article 32 of the Criminal Procedure Code of the Russian Federation, Section 4, Article 4 of the Federal Law "On Jurors in Federal Courts of General Jurisdiction in the Russian Federation" of 20 August 2004, and Subsection 5, Section 1, Article 8 of the Federal Law "On the Entry into Force of the Criminal Procedure Code of the Russian Federation" of 18 December 2001 (as amended by Federal Law No. 181-Φ3 of 27 December 2002), to the extent that they regulate the powers of a circuit military court to consider, in a jury trial, criminal cases concerning specially grave crimes against life committed in the territory under its jurisdiction. These provisions in their constitutional meaning within the system of the legal regulation in force prescribed that for a circuit military court to consider a criminal case concerning a specially grave crime against life a panel of jurors shall be compiled from general and reserve jury pools, listing citizens permanently residing in the territory of the subject of the Russian Federation where the crime was committed. When it is impossible to form a panel of jurors in this manner, respective criminal cases shall be considered by a different composition of the circuit military court, prescribed by law in a non-jury trial, and in these cases imposition of the death penalty is not permitted.

The constitutional meaning of the mentioned provisions established by the Constitutional Court of the Russian Federation in the present Judgment is generally binding and precludes any other interpretation in the law-enforcement practice.

3. To discontinue proceedings in the present case to the extent that they concern the review of the constitutionality of Section 2, Article 1; Subsection 2, Section 1 of Article 7; Section 1, Article 13; Section 1, Article 14; Subsection 2, Section 1 of Article 15, and Article 28 of the Federal Law “On Military Courts in the Russian Federation”, and Subsection 2, Section 2, Article 30; Sections 3 and 6, Article 31 of the Criminal Procedure Code of the Russian Federation.

4. Pursuant to Sections 1 and 2, Article 79 of the 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.

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.

Constitutional Court  
of the Russian Federation

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