

IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT
OF THE RUSSIAN FEDERATION

Judgment
of 15 December 2006 No. 10-II

in the case concerning the review of the constitutionality of the provisions of Sections 4, 5 and 6, Article 215¹ of the Budget Code of the Russian Federation.

Moscow, 15 December 2006

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

in the attendance of attorney P. D. Barenboim, representative of the Moscow City Government, as the party which submitted its 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, Plenipotentiary Representative of the President of the Russian Federation to the Constitutional Court of the Russian Federation M. V. Krotov,

pursuant to Subsection “a”, Section 2, Article 125 of the Constitution of the Russian Federation; Subsection 1 “a”, Section 1, Section 3, Article 3, Subsection 1 “a”, Section 2, Article 22; 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 the provisions of Sections 4, 5, and 6, Article 215¹ of the Budget Code of the Russian Federation.

The reason for the consideration of the case is a request of the Moscow City Government. The ground for the consideration of the case is the discovered uncertainty of whether the provisions challenged by the applicant are in conformity with the Constitution of the Russian Federation.

Having heard the report of Judge-Rapporteur Yu. M. Danilov, statements by the parties, intervention by T. G. Nesterenko, representative of the Federal Treasury invited to the hearing, 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. Article 215¹ of the Budget Code of the Russian Federation stipulates that the cashier service for execution of budgets within the budgetary system of the Russian Federation is entrusted to the Federal Treasury (Section 4). Upon agreement with the executive body of state power of the subject of the Russian Federation the powers of the Federal Treasury in respect of cash execution of the budget of the subject of the Russian Federation, budgets of territorial non-budgetary state funds of the subject of the Russian Federation and budgets of municipal entities within the subject of the Russian Federation may be delegated to executive bodies of state power of the subject of the Russian Federation, provided that the above-mentioned powers are financially covered by revenues of the budget of the subject of the Russian Federation and that this subject of the Russian Federation owns (uses, manages) property required for the exercise of such powers (Section 5). For the purpose of cash execution of budgets, the Federal Treasury shall open accounts with the Central Bank of the Russian Federation giving due regard to the provisions of Articles 156 and 216 of the Code. Any cash transactions related to budget execution shall be executed by the Federal Treasury via the mentioned accounts and recorded in the reports on cash execution of budgets submitted to finance authorities (Section 6).

In its request to the Constitutional Court of the Russian Federation, the Moscow City Government asks to recognize Sections 4, 5, and 6, Article 215¹ of the Budget Code of the Russian Federation to the extent they set requirements for the procedure of budget execution by subjects of the Russian Federation as inconsistent with the Constitution of the Russian Federation, its Articles 1 (Section 1), 2, 5 (Section 3), 8, 11 (Section 2), 18, 73, 74, 76 (Sections 4 and 6), 77 (Section 1) and 78 (Section 3).

In the applicant's opinion, the challenged provisions disproportionately restrict the right of subjects of the Russian Federation to independently execute their budgets, since an essential part of the budgetary powers of subjects of the Russian Federation, i.e. independent cash execution of their budgets, is delegated to federal executive bodies of state power. Therefore, the right of subjects of the Russian Federation to independently dispose of property owned by them (the financial resources of the budget of the subject of the Russian Federation) and the freedom of economic activities are unreasonably restricted; free movement of financial resources is hampered, and the fulfillment of budgetary obligations of subjects of the Russian Federation becomes contingent on the activities of the federal finance authority which is beyond the control of the subject of the Russian Federation and finance authority's efficiency of performance does not depend on the subject of the Russian Federation. Therefore, as is stated in the request, the challenged provisions prevent full implementation of measures aimed to secure the rights and freedoms of man and citizen by the bodies of state power of subjects of the Russian Federation.

Without challenging the principle of treasury execution of budgets at all levels of the budgetary system of the Russian Federation itself (Article 215 of the Budget Code of the Russian Federation), the applicant assumes that mandatory execution of budget of the subject of the Russian Federation through the Federal Treasury may serve as a condition for the disbursement of grants and budget loans from the federal budget to the budget of the subject of the Russian Federation, when the share of grants from the Federal Fund of Financial Assistance to Subjects of the Russian Federation in two out of the past three fiscal years has exceeded 50 percent of the total revenues (Subsection 3, Article 130 of the Budget Code of the Russian Federation).

Thus, the subject matter of consideration by the Constitutional Court of the Russian Federation in the present case is the provisions of Sections 4, 5, and 6, Article 215¹ of the Budget Code of the Russian Federation to the extent they regulate cashier services for executing the budget of a subject of the Russian Federation by the Federal Treasury, Federal Treasury opening accounts with the Central Bank of the Russian Federation for these purposes, and delegation of the Federal Treasury's cashier service powers of executing the budget of a subject of the Russian Federation to executive bodies of state power of subjects of the Russian Federation.

Issues related to cash execution of budgets of territorial non-budgetary state funds of the subjects of the Russian Federation and budgets of municipal entities within the subjects of the Russian Federation are not the subject-matter of the Moscow City Government request and, therefore, shall not be considered by the Constitutional Court of the Russian Federation in the present proceedings.

2. The Constitution of the Russian Federation proclaims that the Russian Federation is a federal state with the federal order based, *inter alia*, on state unity and division of competence and powers between bodies of state power of the Russian Federation and the bodies of state power of the subjects of the Russian Federation (Section 1, Article 1; Section 3, Article 5).

Pursuant to the Constitution of the Russian Federation, state power in the subjects of the Russian Federation shall be exercised through bodies of state power established by them (Section 2, Article 11); determination of the general principles of organization of bodies of state power of the subjects of the Russian Federation and the general principles of organization of the system of bodies of state power of subjects of the Russian Federation and, therefore, the principles related to the economic foundations of the activities of such authorities is a joint competence of the Russian Federation and its subjects, and pursuant to Articles 72 (Subsection "n", Section 1), 76 (Section 2) and 77 (Section 1), shall be regulated by federal laws and adopted them laws and other normative acts adopted by the subjects of the Russian Federation pursuant to them.

By prescribing the general principles of organizing of the legislative (representative) and executive bodies of state power in the subjects of the Russian Federation and specifying them in the federal law, the federal legislators' discretion is restricted by the constitutional provisions on organization of power in the Russian Federation as a democratic, federal and rule of law state. Subjects of the Russian Federation, in their turn (by establishing, at their own discretion, a system of bodies of state power) act in conformity with the fundamentals of the constitutional order of the Russian Federation and the mentioned general principles. They have no right to exercise this power to the detriment of the unity of the system of state power in the Russian Federation (Section 3, Article 5; Section 2, Article 77; Section 2, Article 78 of the Constitution of the Russian Federation) and shall exercise them within the legal framework determined by the Constitution of the Russian Federation and the federal laws adopted on its basis (Judgment No. 13-II of the Constitutional Court of the Russian Federation, of 21 December 2005, in the case concerning the review of the constitutionality of certain provisions of the Federal Law "On the General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of Subjects of the Russian Federation").

2.1. Pursuant to the Federal Law "On the General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of Subjects of the Russian Federation", the economic foundations of activities pursued by the executive bodies of state power of the subject of the Russian Federation consist of property owned by the subject of the Russian Federation, budget funds and territorial non-budgetary state funds of the subject of the Russian Federation, and proprietary rights of the subject of the Russian Federation (Subsection 1, Article 26¹⁰).

Article 26¹³ of the mentioned Federal Law stipulates that each subject of the Russian Federation has its own budget (Subsection 1). Bodies of state power of the subject of the Russian Federation shall balance the budget of the respective subject of the Russian Federation and ensure compliance with the requirements for regulation of budgetary relations set by the federal laws and normative acts of the President and the Government of the Russian Federation. They shall ensure implementation of the budgetary procedures, set the size of budget deficits, size and structure of state debt of the subject of the Russian Federation, fulfill budgetary and debt obligations of the subject of the Russian Federation (Subsection 2). Formation, approval and execution of the budget of the subject of the Russian Federation and control of its execution shall be carried out by the bodies of state power of the subject of the Russian Federation independently and in compliance with the requirements set in the present Federal Law and the Budget Code of the Russian Federation, and laws of the subjects of the Russian Federation adopted on their basis (Subsection 3).

The above provisions correspond to the provisions of the Budget Code of the Russian Federation determining the budgetary powers of federal bodies of state power and bodies of state power of the subjects of the Russian Federation.

Thus, the budgetary powers of the federal bodies of state power, pursuant to Article 7 of the Budget Code of the Russian Federation, include determining the general principles of the organization and operation of the budgetary system of the Russian Federation, the fundamentals of the budgetary process and inter-budgetary relations; determining the fundamentals of approval and execution of budgets within the budgetary system of the Russian Federation, approval of reports on their execution and control of their execution; setting a procedure of imposing and exercising expenditure obligations of subjects of the Russian Federation and municipal entities when these obligations are to be covered by subsidies from the federal budget; determining the budget classification of the Russian Federation and the general procedure of its application; other budgetary powers referred by the Code and other federal laws to the budgetary powers of federal bodies of state power.

The budgetary powers of bodies of state power of the subjects of the Russian Federation pursuant to Article 8 of the Budget Code of the Russian Federation are the following: to determine a procedure to approve and execute the budget of the subject of the Russian Federation and to control its execution; to impose and exercise expenditure obligations of the subject of the Russian Federation; to exercise other budgetary powers referred by the Code and other federal laws to the budgetary powers of bodies of state power of the subjects of the Russian Federation. At the same time, the bodies of state powers of the subjects of the Russian Federation of Moscow and Saint Petersburg as cities of federal significance, apart from the above listed budgetary powers enjoy, pursuant to the Code and other federal laws, certain budgetary powers related to the budgets of intraurban municipal entities.

2.2. As was stated by the Constitutional Court of the Russian Federation in its Judgment No. 1-II of 9 January 1998 in the case concerning the review of the constitutionality of the Forest Code of the Russian Federation, the federal law regulating certain issues (matters) of joint competence as a generally applicable statute, when determining the rights and obligations of participants in legal relations, including the powers of bodies of state power, delineates these powers.

According to the abovementioned legal opinion, the Federal Law “On the General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of Subjects of the Russian Federation” and the Budget Code of the Russian Federation delineate the powers of bodies of state power of the Russian Federation and bodies of state power of the

subjects of the Russian Federation in the budget sphere pursuant to Articles 5 (Section 3), 11 (Section 3), 71, 72, 73 and 76 of the Constitution of the Russian Federation.

3. Directly related to the principles of organization and operation of bodies of state power in the Russian Federation as a democratic, federal and rule-of law State established by Articles 1 (Section 1), 4, 5, 11, 71, 72, 73, 77 and 78 of the Constitution of the Russian Federation is the principle of integrity of economic space (Section 1, Article 8). Within the meaning of Articles 71 (Subsection “g”) and 74 (Section 1) of the Constitution of the Russian Federation, this principle is ensured by determination, within the scope of competence of the Russian Federation, of the legal foundations of a single market, finance and, *inter alia*, budget regulation, and the prohibition to impose any barriers to free movement of goods, services, and financial resources.

These constitutional principles aimed at establishing an economic foundation of state unity and integrity of the Russian Federation presume such legislative regulation of economic relations, including financial relations, which contributes to the achievement of the mentioned constitutional aims and supports the unity of the budgetary system as the financial and economic basis for the exercise of public functions of the Russian Federation and subjects of the Russian Federation. At the same time, this regulation shall not infringe the financial independence of the subjects of the Russian Federation enjoyed by them outside the competence of the Russian Federation and its powers with respect to matters within the joint competence of the Russian Federation and subjects of the Russian Federation.

This approach was reflected in the Budget Code of the Russian Federation which considers the budgets of subjects of the Russian Federation to be a separate level of the budgetary system of the Russian Federation and secures the principle of autonomy of budgets which in particular implies the right and obligation of bodies of state power and local self-government on the respective level of the budgetary system of the Russian Federation to independently exercise budget procedures, except for cases determined by the Code. Equally this principle implies the right of bodies of state power and local self-government to independently determine, pursuant to the Code, forms and areas of budget spending, except for expenditures financed by subsidies and grants from budgets on other levels of the budgetary system (Articles 10, 15 and 31).

4. The constitutional scope of the Russian Federation powers to exercise financial regulation (Subsection “g”, Article 71 of the Constitution of the Russian Federation) is not limited solely to legal regulation of financial relations and determination, upon its basis, of the financial status of participants in legal relations. Financial regulation correlates with other powers referred to the competence of the Russian Federation by the Constitution of the Russian Federation. These powers include determining the fundamentals of the federal policy in the

sphere of economic development of the Russian Federation (Subsection “f”, Article 71), which shall be carried out with regard to the main areas of internal and foreign policy of the State (Section 3, Article 80; Subsection “f”, Article 84) and common financial policy (Subsection “b”, Section 1, Article 114).

The federal legislator, exercising financial regulation on the basis of the Constitution of the Russian Federation, enjoys discretionary powers in the choice of legal means what allows him to take account of the whole range of socio-economic and other factors of the development of the Russian Federation. Therefore, the legal norms, *inter alia* the norms of finance law, exert their regulatory impact on the budgetary relations not only by themselves, but in conjunction with the aims of state economic policy, including financial policy and financial regulation within their constitutional meaning. On this basis, the Russian Federation as a rule of law and social State guarantees appropriate financial conditions to implement social development programs and ensure rights and freedoms of man and citizen (Articles 2, 7, 18; Subsections “c”, “f”, Article 71 of the Constitution of the Russian Federation).

Based on this legal opinion expressed by the Constitutional Court of the Russian Federation in Judgment No. 12-II of 17 June 2004 in the case concerning the review of the constitutionality of the provisions of Articles 155, 156 and 283 of the Budget Code of the Russian Federation, the federal legislator exercising financial regulation, *inter alia*, in choosing a certain organizational form of cashier services in executing budgets of all levels of the unified budgetary system in the Russian Federation, shall be guided by the aims of state economic policy giving due regard to both the constitutionally predetermined features of the federal order of the Russian Federation and the aims of reforming the financial system at the present stage of the Russian Federation’s socio-economic development.

These were the priority objectives pursued by the federal legislator when adopting the Federal Law “On Amendments to the Budget Code of the Russian Federation with Respect to Regulation of Inter-budgetary Relations” of 20 August 2004 which added Article 215¹ “The Fundamentals of Budget Execution” to the Budget Code of the Russian Federation.

4.1. Pursuant to Article 26²² of the Federal Law “On the General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of Subjects of the Russian Federation” bodies of state power of a subject of the Russian Federation shall independently execute the budget of a subject of the Russian Federation in accordance with the general principles set forth by the Budget Code of the Russian Federation (Subsection 1). Cashier services of budget execution by the subjects of the Russian Federation shall be exercised in accordance with the procedure and under the conditions prescribed by the Budget Code of the Russian Federation (Section 2).

Defining the fundamentals of budget execution, the Budget Code of the Russian Federation stipulates that treasury execution of budget shall be established in the Russian Federation; executive bodies of state power entrusted with the organization of budget execution and execution of budgets, management of budget accounts and budget resources, shall be treasurers for all administrators and recipients of budget resources and effect payments from budget resources on behalf and as instructed by budget institutions (Article 215); cashier services in budget execution in the budgetary system of the Russian Federation shall be provided by the Federal Treasury (Section 4, Article 215¹).

Distinguishing between the single budget account and personal accounts of the main administrators, administrators and recipients of resources from the corresponding budget (opened both for the accounting of budget resources and accounting of resources obtained from entrepreneurial and other profitable activities), the Budget Code of the Russian Federation does not directly prescribe which particular accounts are subject to the requirements of Section 4, Article 215¹ of cashier service for budget execution by the Federal Treasury. The meaning of this norm may be revealed only in conjunction with other norms of the Code.

Pursuant to Subsection 6, Article 151, Sections 1 and 2, Article 215¹ of the Budget Code of the Russian Federation, the budget of a subject of the Russian Federation shall be executed by the highest executive body of state power of a subject of the Russian Federation, and the organization of such execution shall be entrusted to a financial institution created pursuant to the laws of the Russian Federation. Whereas, according to Article 215 of this Code, treasury execution of the budget of a subject of the Russian Federation implies that functions of the treasurer for all administrators and recipients of budget resources on this level of the budgetary system of the Russian Federation shall be performed precisely by the bodies of executive power of the subject of the Russian Federation. Furthermore, pursuant to Article 166¹ of the Code enabling the Federal Treasury to open and maintain personal accounts of the main administrators, administrators and recipients of resources from budgets of the subjects of the Russian Federation as instructed by the highest executive body of state power of the subject of the Russian Federation under a concluded agreement, the cashier services for these participants in the budgetary procedure are budgetary powers of the executive bodies of state power of the Russian Federation.

Therefore, the scope of Section 4, Article 215¹ of the Budget Code of the Russian Federation includes only execution and accounting by the Federal Treasury of transactions on cash receipts to the budget of the subject of the Russian Federation and cash payments from such budget to the single budget account of the subject of the Russian Federation.

4.2. Transactions are executed and accounted for on the single budget account of the subject of the Russian Federation secured by the “single cash desk” principle, which, pursuant to Section 3, Article 215¹ and Article 216 of the Budget Code of the Russian Federation, prescribes crediting of all budget revenues, raising and repayment of financial resources to cover budget deficits, and disbursement of all expenditures using the single budget account. Thus, the transfer and crediting of revenues on the single budget account is one of the stages of budget execution with respect to revenues (Article 218); budgets are executed with respect to expenditures within the limits of actual budget funds available on the single budget account (Section 1, Article 219); budget disbursement is effected by debiting monetary resources from the single budget account in the amount of the approved budget obligation in favor of individuals and legal entities (Subsection 1, Article 227).

This arrangement predetermines the significance of organizing execution and accounting of transactions on cash receipts to the budget of the subject of the Russian Federation and cash payments from such budget on the single budget account of the subject of the Russian Federation, as well as the importance of due legal regulation in this area with regard to the constitutional principles of common economic space and division of competence between the Russian Federation and the subjects of the Russian Federation.

At the same time, in a federal state, where budgets of corresponding levels as independent budgets form a unified budgetary system, the coordination of activities of public authorities involved in the budget process and their relations acquires particular significance. Regarding the principle of equality of all subjects of the Russian Federation in their relations with federal bodies of state power (Section 4, Article 5 of the Constitution of the Russian Federation) this conclusion formulated by the Constitutional Court of the Russian Federation with respect to financial relations of municipal entities having different territorial principles of establishment (Judgment No. 16-II, of 11 November 2003, in the case concerning the review of the constitutionality of the provisions of Section 2, Article 81, Law of the Chelyabinsk Region “On the Budget Order and the Budget Procedure in the Chelyabinsk Region”) is even more critical in resolving the indicated issues at the federal level.

4.3. The implementation of the single financial, credit and monetary policy in the Russian Federation ensured by the Government of the Russian Federation (Section 1 (b), Article 114 of the Constitution of the Russian Federation) and based on the uniform federal standards of financial activity established by federal bodies of state power (Articles 7, 165, 166¹, Section 2, Article 225 of the Budget Code of the Russian Federation) does not rule out joint participation of federal executive bodies of state power and executive bodies of state power of subjects of the

Russian Federation in certain procedures within the budget process, *inter alia*, at the stage of executing the budget of the subjects of the Russian Federation.

By vesting the Federal Treasury with cashier service powers in executing budgets of all levels of the budgetary system of the Russian Federation, the federal legislator considered the need to enhance the security of public finance management and transparency of the budget process prescribed by the Constitution of the Russian Federation. This approach to legal regulation allows to ensure the comparability of budgets execution indicators on all levels of the budgetary system of the Russian Federation, to have up-to-date information on the state of public finance in the whole country at any given time, which is necessary for macroeconomic forecasting and decision-making in matters of providing financial aid to the budgets of the subjects of the Russian Federation. At the same time, nothing in this arrangement implies that the Federal Treasury has the right to appropriate the budget powers granted by the Constitution of the Russian Federation to the executive bodies of state power of the subjects of the Russian Federation, i.e. the powers to dispose of the budget resources of Russian Federation subjects, to decide upon areas of spending, and authorize payments from the single budget account.

On this understanding of the normative contents of Section 4, Article 215¹ of the Budget Code of the Russian Federation relies the law-enforcement practice, which is demonstrated at the by-law level, in particular, by the Procedure of Cashier Services in Executing Budgets of Subjects of the Russian Federation and Local Budgets by Territorial Bodies of the Federal Treasury adopted pursuant to Article 166¹ of the Budget Code of the Russian Federation by Federal Treasury Order No. 1n of 22 March 2005. This normative act stipulates that all cash transactions concerning the execution of the respective budget shall be executed by a body of the Federal Treasury on behalf of and as instructed by a financial authority (authorized body), receipts administrator, administrator or recipient of the budget resources on the basis of the payment documents issued by them (Subsection 1.5).

Vesting the Federal Treasury with cashier service powers to execute budgets of the subjects of the Russian Federation is also justified by the fact that all subjects of the Russian Federation, including those receiving subsidies from the Federal Fund for Financial Assistance to Subjects of the Russian Federation and those which do not need such subsidies, receive transfers from the federal budget (subventions and subsidies).

Furthermore, pursuant to the Budget Code of the Russian Federation budget revenues of the subjects of the Russian Federation consist of tax and non-tax revenues. The tax revenues consist of regional taxes and allotments out of the federal taxes and duties, taxes imposed by special taxation regimes. These revenues are considered to be paid revenue of the budgets of subjects of the Russian Federation from the moment determined by the tax legislation of the

Russian Federation. Monetary funds are considered credited to the budget revenues of the budget of the subjects of the Russian Federation from the moment the Bank of Russia or a credit institution executes a transaction on crediting (accounting) of these funds to the account of the authority executing the budget (Articles 40, 56 and 57).

By entrusting the tax authorities with the supervision of calculation correctness, full and timely transfer of taxes and duties to the corresponding budget (Article 31 of the Tax Code of the Russian Federation), the federal legislator, taking account of the principles of organization of the Russian Federation tax system stemming from Articles 71 (h), 72 (Subsection “i”, Section 1) and 75 (Section 3) of the Constitution of the Russian Federation) lawfully imposed the related obligations, i.e. executing and accounting for transactions on cash receipts to the budget of the subject of the Russian Federation and cash payments from such budget on the single budget account of the subject of the Russian Federation, on the Federal Treasury authorities which, like the tax authorities, are part of federal economic services (Article 71 (g) of the Constitution of the Russian Federation).

4.4. Therefore, Section 4, Article 215¹ of the Budget Code of the Russian Federation, stipulating that that cashier services in executing budgets of subjects of the Russian Federation shall be carried out by the Federal Treasury is consistent with the Constitution of the Russian Federation, as neither its literal meaning, nor the meaning attributed to it by the law-enforcement practice permits the Federal Treasury to dispose of the budget funds of subjects of the Russian Federation, to determine areas of spending, or authorize payments from the single budget account of subjects of the Russian Federation. Executing of and accounting for transactions associated with cash receipts to the budget of the subject of the Russian Federation and cash payments from such budget on the single budget account of the subject of the Russian Federation are exercised by the Federal Treasury to ensure centralized record of information on the state of public finance as a whole. This arrangement is based on the constitutional powers of the Russian Federation to exercise financial regulation ensuring maximum efficiency of the whole budgetary system and the appropriate organization of inter-budgetary relations.

The need to ensure an effective and stable mechanism to protect the budgetary rights of subjects of the Russian Federation and their equality in relations with federal bodies of state power as prescribed by the Constitution of the Russian Federation makes it necessary to determine the fundamentals of the cashier service procedure for execution of budgets, the fundamentals of relations between the Federal Treasury and the executive bodies of state power of subjects of the Russian Federation in the framework of the cashier service for execution of budgets of subjects of the Russian Federation, and determine, at a federal law level, the forms

and degree of the Federal Treasury's responsibility for undue exercise of its functions in respect of the cashier service in executing budgets of subjects of the Russian Federation.

5. Pursuant to Article 78 (Section 2) of the Constitution of the Russian Federation, federal executive bodies of state power, upon agreement with executive bodies of state power of subjects of the Russian Federation, may delegate certain powers to them, provided such delegation is consistent with the Constitution of the Russian Federation and the federal laws. Section 5, Article 215¹ of the Budget Code of the Russian Federation, stipulates that, upon agreement with the executive bodies of state power of the subject of the Russian Federation, the Federal Treasury's powers in respect of cash execution of their budgets may be delegated to executive bodies of state power of the subjects of the Russian Federation, provided that the above-mentioned powers are financially covered by budget revenues of the subject of the Russian Federation and that the latter owns (uses, manages) property required for the exercise of such powers.

According to the legal opinion of the Constitutional Court of the Russian Federation expressed in Judgment No. 8-II, of 30 June 2006, in the case concerning the review of the constitutionality of the provisions of Section 11, Article 154 of Federal Law No. 122-Φ3 "On Amendments to Legislative Acts of the Russian Federation and Annulment of Certain Legislative Acts of the Russian Federation due to Adoption of the Federal Laws "On Amendments to the Federal Law "On the General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of Subjects of the Russian Federation" and "On the General Principles of Organization of Local Self-Government in the Russian Federation", implementation of the above-mentioned norm (as a norm of a federal law within the scope of joint competence of the Russian Federation and subjects of the Russian Federation and dividing the public powers), the powers of bodies of state power of the Russian Federation and bodies of state power of the subjects of the Russian Federation shall be distributed and exercised in a manner that ensures consideration and coordination of the interests of the Russian Federation and its subjects in the decision-making process.

The reference in Section 5, Article 215¹ of the Budget Code of the Russian Federation to the fact that the powers of the Federal Treasury "may be" delegated to executive bodies of state power of a subject of the Russian Federation does not imply that this matter is settled arbitrarily at any party's discretion, as it is presumed that the subject of the Russian Federation expressing its intention to assume the above-mentioned powers can ensure due financial coverage by revenues of the budget of a subject of the Russian Federation and that it owns (uses, manages) property required for the exercise of such powers, whereas the Russian Federation guarantees compliance with the procedure for conclusion of respective agreement and in the event of any

discord concerning the draft agreement ensures the application of conciliation procedures stipulated by the Constitution of the Russian Federation and the laws in force.

Thus, Section 5, Article 215¹ of the Budget Code of the Russian Federation does not contradict the Constitution of the Russian Federation, as it implies the delegation of the Federal Treasury's powers with respect to cashier services in executing budgets of the subjects of the Russian Federation to executive bodies of state power of subjects of the Russian Federation, provided that the balance of the interests of the Russian Federation and the subject of the Russian Federation as constitutionally protected values is maintained.

6. Pursuant to Section 6, Article 215¹ of the Budget Code of the Russian Federation, accounts with the Central Bank of the Russian Federation intended for cashier services in executing budgets of subjects of the Russian Federation shall be opened by the Federal Treasury, which shall execute all cash transactions using the mentioned accounts.

Since vesting the Federal Treasury with cashier service powers in budget execution is in conformity with the Constitution of the Russian Federation, the norm of Section 6, Article 215¹ of the Budget Code of the Russian Federation, may not be regarded inconsistent with the Constitution of the Russian Federation. Furthermore, pursuant to this norm the budgetary rights of the subjects of the Russian Federation correlate with the Federal Treasury's obligation to report cash execution of budgets to the financial authorities of the respective subjects of the Russian Federation.

The mandatory nature of the requirement to open budget accounts only with branches of the Central Bank of the Russian Federation which can service the accounts of budgets within the budgetary system of the Russian Federation, was recognized by the Constitutional Court of the Russian Federation as conforming to the Constitution of the Russian Federation in the Judgment No. 12-II of 17 June 2004 in the case concerning the review of the constitutionality of the provisions of Articles 155, 156 and 283 of the Budget Code of the Russian Federation.

Concluding from the above and pursuant to Sections 1 and 2, Article 71, Articles 72, 74, 75 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 Section 4, Article 215¹ of the Budget Code of the Russian Federation, stipulating that cashier services in executing budgets of subjects of the Russian Federation shall be carried out by the Federal Treasury as conforming to the Constitution of the Russian Federation, because the norm contained therein stipulates that the Federal Treasury has no right to dispose of the budget funds of subjects of the Russian Federation, to determine areas of

spending and authorize payments from the single budget account of subjects of the Russian Federation. At the same time, the effecting of and accounting for transactions involving cash credits to the budget of a subject of the Russian Federation and cash payments from this budget shall be exercised by the Federal Treasury to ensure centralized record of information on the state of public finance as a whole. This arrangement is based on the constitutional powers of the Russian Federation to exercise financial regulation ensuring maximum efficiency of the whole budgetary system and an appropriate organization of interbudgetary relations.

The need to ensure an effective and sustainable tool to protect the budgetary rights of subjects of the Russian Federation and their equality in relations with federal bodies of state power in compliance with the Constitution of the Russian Federation explains the setting of the basics of the procedure for cash execution of budgets, establishment of basic relations between the Federal Treasury and executive bodies of state power of the subjects of the Russian Federation in the course of cash execution of their budgets, as well as forms and the degree of the Federal Treasury's responsibility for due fulfillment of functions entrusted to it with respect to cash execution of budgets of subjects of the Russian Federation at the federal law level.

2. To recognize Section 5, Article 215¹ of the Budget Code of the Russian Federation as conforming to the Constitution of the Russian Federation, as the norm contained therein stipulating that upon agreement with the executive bodies of state power of subjects of the Russian Federation the Federal Treasury's powers in respect of cash execution of their budgets may be delegated to executive bodies of state power of subjects of the Russian Federation, implies that, in order to maintain a balance of interests of the Russian Federation and its subjects, the Russian Federation guarantees compliance with the procedure for concluding corresponding agreements and in the event of any discord concerning the draft agreement ensures the application of conciliation procedures stipulated by the Constitution of the Russian Federation and the laws in force.

3. To recognize Section 6, Article 215¹ of the Budget Code of the Russian Federation stipulating that the Federal Treasury shall open accounts with the Central Bank of the Russian Federation for the purpose of cashier services in execution of budgets of the subjects of the Russian Federation and shall effect any cash transactions related to budget execution using these accounts as conforming to the Constitution of the Russian Federation.

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 any 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 immediately 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. 10-II