

IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT
OF THE RUSSIAN FEDERATION

Judgment
of 12 July 2007 No. 10-Π

in the case concerning the review of the constitutionality of the provision of Paragraph 3, Section 1, Article 446 of the Civil Procedure Code of the Russian Federation in connection with complaints of V. V. Bezmenov and N. V. Kalabun.

Moscow, 12 July 2007

The Constitutional Court of the Russian Federation composed of Presiding Judge V. G. Yaroslavtsev and Judges N. S. Bondar, G. A. Gadzhiev, A. L. Kononov, L. O. Krasavchikova, S. P. Mavrin, Yu. D. Rudkin, A. Ya. Sliva, V. G. Strekozov, B. S. Ebzeev, in the attendance of O. M. Shteynbok, attorney, the representative of V. V. Bezmenov, D. A. Kutepov, attorney, the representative of N. V. Kalabun, 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 Russian Federation, Subsection 3, Section 1, Sections 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 the provision of Paragraph 3, Section 1, Article 446 of the Civil Procedure Code of the Russian Federation.

The reason for the consideration of the case is the complaints of V. V. Bezmenov and N. V. Kalabun. The ground for the consideration of the case is the discovered uncertainty of whether the provision challenged by the applicants is in conformity with the Constitution of the Russian Federation.

Insofar as both complaints concern essentially the same subject matter and by virtue of Article 48 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation” the Constitutional Court of the Russian Federation is permitted to consider these applications together.

Having heard the report of Judge-Rapporteur L. O. Krasavchikova, statements by the representatives of the parties, the expert opinion of N. A. Syrodoyev, PhD in Law, interventions by K. P. Pirogov for the Ministry of Justice of the Russian Federation, I. Yu. Mikhalev for the

Federal Service of Court Bailiffs, 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. Paragraph 3, Section 1, Article 446 of the Civil Procedure Code of the Russian Federation provides that recovery under the enforcement documents shall not be made against the plots of land belonging to a citizen-debtor under property title if it is not used for entrepreneurial activity.

1.1. On 13 January 2005 the Kirovsky District Court of Tomsk, having examined the civil action of V. V. Bezmenov, rendered a decision on recovery of the loan value and the interest under the respective agreement in the amount of 456,438.25 Russian rubles from A. G. Uzhachenko. However, during the enforcement proceedings it was established that the debtor's possessions are insufficient for satisfying the plaintiff's claims. In this connection, V. V. Bezmenov lodged with the same court a civil action seeking severance of A. G. Uzhachenko's share in joint marital property (the plots of land) and enforcement against it. On 10 May 2006 the Kirovsky District Court of Tomsk dismissed the claim on the ground that a possibility to enforce against a plot of land, within the meaning of Article 446 of the Civil Procedure Code of the Russian Federation, is predetermined by commercial purpose of its use, and a number of the plots of land, which belong to a citizen-debtor is irrelevant. As regards the disputed plots of land, which are situated on the agricultural lands, they are used by spouses Uzhachenko for gardening, but not for entrepreneurial activity.

Challenging the constitutionality of the provision of Paragraph 3, Section 1, Article 446 of the Civil Procedure Code of the Russian Federation, V. V. Bezmenov asserts that, by prohibiting recovery under the enforcement documents against the plots of land if they are not used for entrepreneurial activity, this provision disproportionately restricts the rights of a creditor and thereby upsets the balance of a creditor's and a debtor's interests during enforcement proceedings. Consequently, the respective provision is unfair, inadequate and impermissible restriction of the constitutional rights. The applicant asks to recognize the said provision as non-conforming to Articles 8 (Section 2), 35 (Sections 1 and 2), 45, 46 (Sections 1 and 2) and 55 of the Constitution of the Russian Federation.

1.2. By the decision of the Oktyabrsky District Court of Saratov of 31 October 2005, upheld by the cassation instance court, the actions of the enforcement bailiff leading to the transfer of the plot of land to the possession of N. V. Kalabun in pursuance of enforcement of the judicial decision recovering damages in the amount of 102,048 Russian rubles from V. A. Shevtsov, the owner of the plot of land, were found to be unlawful and the act of transfer

was invalidated. The court stated that the disputed plot of land, measuring 904 square meters, was provided for individual residential building and its usage by V. A. Shevtsov, who is not an individual entrepreneur, may not be recognized as an entrepreneurial activity.

In the opinion of N. V. Kalabun, the provision of Paragraph 3, Section 1, Article 446 of the Civil Procedure Code of the Russian Federation, on the basis of which the given judicial decision has been rendered, does not conform to Articles 2, 7, 17 (Section 3), 19 (Section 1), 35 (Section 1 and 2), 45 (Section 1) and 46 (Sections 1 and 2) of the Constitution of the Russian Federation.

1.3. Therefore, the subject-matter for consideration by the Constitutional Court of the Russian Federation in the present proceedings is the provision of Paragraph 3, Section 1, Article 446 of the Civil Procedure Code of the Russian Federation, which provides for a prohibition to recover under the enforcement documents against the plots of land belonging to a citizen-debtor under property title unless it is used for entrepreneurial activity.

2. The Constitution of the Russian Federation guarantees everyone freedom of economic activity, the right to have property, possess, use and dispose of it both personally and jointly with other people, and protection of it by law (Article 8; Section 1 and 2, Article 35), as well as state, including judicial, protection of rights and freedoms (Section 1, Article 45; Sections 1 and 2, Article 46). This predetermines the legal status of the participants of the civil transaction, considering that the protection of the rights and freedoms of man and citizen in the Russian Federation as a rule of law state shall be the constitutional duty of the State (Section 1, Article 1; Article 2).

By virtue of Articles 15 (Section 2), 17 (Section 3), 19 (Section 1 and 2) and 55 (Section 1 and 3) of the Constitution of the Russian Federation and following the general legal principle of fairness within regulation of property relations based on equality, autonomy of will, and proprietary autonomy of their participants, protection of the right of property and other proprietary rights (including the enforceable claims) shall be carried out on the ground of proportionality in order to ensure the balance of rights and legal interests of the participants of the civil transaction – owners, creditors, debtors. Permissible restrictions imposed by law on the rights to possess, use and dispose of property, freedom of entrepreneurial activity, and freedom of contract should also meet the requirements of fairness, shall be adequate, proportionate, should not be retroactive, and should not substantially affect the essence of the respective constitutional rights, i.e. they shall not restrict the scope and application of the respective constitutional norms. The possibility of restrictions *per se* (as well as their nature) shall be conditioned by a need to protect constitutionally significant values, notably the fundamentals of the constitutional order, morals, health, the rights and lawful interests of others, and for ensuring

the defense of the country and the security of the State (Decision of the Constitutional Court of the Russian Federation of 4 December 2003 No. 456-O).

The provisions of the Constitution of the Russian Federation mentioned above in the legal opinion of the Constitutional Court of the Russian Federation underlie the regulation of the system of relations, which binds a creditor and a citizen-debtor if the latter fails to perform his civil obligation. This obligation entails liability with all his possessions before a creditor, as well as an opportunity within the enforcement proceedings and in cases provided for by the law, to have enforcement against the possessions, which belong to a citizen-debtor under a property title.

2.1. The grounds and the procedure of acquiring the right to property, its transition and lapse are regulated by the federal law. At the same time, the content of this regulation shall not be determined arbitrarily – property relations in the Russian Federation shall be regulated in accordance with the principles of the rule of law state and on the basis of legal equality and fairness (Judgment of the Constitutional Court of the Russian Federation of 20 July 1999 No. 12-II). Following from the above and regarding the legal relations concerned, the provisions of Article 35 (Section 1) of the Constitution of the Russian Federation, according to which the right to property (and accordingly, the property of a debtor in default) is protected by the law, shall not be interpreted by the legislator as ignoring the legal interests of a creditor.

Within the meaning of Article 46 (Section 1) of the Constitution of the Russian Federation, which guarantees everyone the judicial protection of his rights and freedoms, enforcement of a judicial decision, including the one in the creditor's favor when a debtor is in violation of a civil obligation, should be considered as an element of judicial protection. This requires the State represented by the legislator to take necessary measures to ensure its exercise. As it has been repeatedly stated by the Constitutional Court of the Russian Federation, the protection of violated rights may not be recognized effective if a judicial act or an act of another empowered authority is not enforced in due time. While choosing within its constitutional discretion one or another mechanism for the enforcement proceedings, the federal legislator is in any case under an obligation to carry out consistent regulation of the relations in this sphere, to create a stable legal basis, and is not entitled to call the principle of enforcement of judicial decisions in question (Judgments of 30 July 2001 No. 13-II, of 15 January 2002 No. 1-II, of 14 May 2003 No. 8-II, and of 14 July 2005 No. 8-II).

Along with that, ensuring a possibility to satisfy the interests and to protect the proprietary rights of a person or legal entity empowered under a civil obligation (creditor, plaintiff), the legislator must proceed from the constitutional duty of the Russian Federation as a social state to care about well-being of its citizens, preserving the conditions for normal existence. As well the legislator shall proceed from the constitutional foundations of a person's

legal status, in particular the requirements of Article 17 (Section 3) of the Constitution of the Russian Federation, according to which the exercise of the rights and freedoms of man and citizen shall not violate the rights and freedoms of the others. In the present case this is the right of a person under obligation (debtor) in enforcement proceedings, when a necessity occurs to enforce the decision against the possessions owned by a debtor as property. No infringement on the human dignity or violation of the social and economic rights of citizens is permissible (Section 1, Article 7; Section 1, Article 21 of the Constitution of the Russian Federation; Article 25 of the Universal Declaration of Human Rights).

2.2. Therefore, legislative regulation of recovery under the enforcement documents shall be carried out on the stable legal basis of the balanced regulation of the rights and legal interests of all participants of enforcement proceedings. The limits of possible recovery shall be legislatively prescribed and they shall not infringe upon the basic content of a debtor's rights and at the same time shall satisfy the interest of protecting a creditor's rights (encompassing his enforceable claim) in order to prevent or minimize the scope of negative consequences of the debtor's failure to perform his obligations.

3. Pursuant to Article 9 of the Constitution of the Russian Federation, the land and other natural resources shall be used and protected as the foundation of life and activities of the peoples living on the respective territory (Section 1); the land and the other natural resources may be in private, state, municipal and other forms of property (Section 2).

Providing detailed regulation of the provisions of the Constitution of the Russian Federation, the Land Code of the Russian Federation also relies on vision of land as a foundation of life and activities of an individual, and at the same time an immovable possession, recognizing it as an object of the right to property and other rights (Section 1, Article 1). Relying on these considerations this Code, while classifying the land into a number of categories according to their functional use (agricultural lands, urban communities' lands, industrial lands etc.), determines the legal grounds of acquiring the right to a certain plot of land (used for construction of a house, a garage, subsidiary farming or gardening, farming (besides household), haying, and grazing). Among these rights the Code lists property rights, the right of life-long inheritable possession, the right of permanent (indefinite) use, lease, gratuitous fixed term use (Articles 15 and 20–24). A plot of land purchased by a citizen as a private property, according to Article 28 of the Land Code of the Russian Federation, may be sold, given as a gift, mortgaged, leased or disposed of in other way if the respective plots of land are not excluded from the transactions or not restricted in transactions.

Therefore, civil transactions concerning the plots of land encompassing totality of civil obligations arising from transactions and other valid legal acts predetermine civil regime of the

plots of land as a significant object of immovable property. Consequently, it is the subject of regulation not of land, but civil legislation.

4. The Federal Law of 21 July 1997 “On the Enforcement Proceedings” provides the conditions and procedure for enforcement of acts rendered by courts of general jurisdiction and commercial courts, as well as by other authorities, which in the exercise of their powers provided for by law have a right to impose on individuals and organizations an obligation to transfer to other individuals, organizations or respective budgets financial recourses and other possessions or order them to perform certain actions in their favor or to abstain from these actions.

Within the general enforcement procedure against the debtor’s property the federal legislator established that if a debtor does not have sufficient financial resources to satisfy the claims of a creditor, recovery shall be effected against other possessions belonging to a debtor. At the same time, pursuing the aim to preserve decent existence and life for a debtor and his dependants, the legislator provides for exceptions from this rule, which precludes recovery from certain types of debtor’s possessions (Section 5, Article 46 of the Federal Law “On the Enforcement Proceedings”).

Pursuant to Article 50 of the said Federal Law during the execution of the enforcement documents in respect of citizens a recovery shall not be effected from possessions of citizens included in the List of types of possessions against which recovery under enforcement documents shall not be possible. This provision is systemically interconnected with Article 24 of the Civil Procedure Code of the Russian Federation, which provides for liability of a citizen with all his possessions in respect of his obligations, except possessions against which recovery shall not be possible and the list of which is provided by the civil procedure legislation.

Accordingly, Article 446 of the Civil Procedure Code of the Russian Federation contains an exhaustive list of types of possessions against which recovery under enforcement documents shall not be possible pursuant to the law in force and due to its purpose, qualities, and characteristics of a person, who owns them. This Article is a procedural guarantee of exercise of social and economic rights of such persons, whose conditions of decent existence and activities, including professional activities, shall be preserved by providing a citizen-debtor with proprietary (enforcement) immunity.

It is an executing court bailiff, who during the enforcement of a decision under enforcement documents in the case file determines whether the possessions, which are owned by a citizen-debtor under the property title, belong to property against which enforcement is possible or to property protected by proprietary (enforcement) immunity. In case of dispute such determination is made by a court.

5. As it has been reiterated by the Constitutional Court of the Russian Federation on many occasions, the right to judicial protection is significantly restricted, if courts during consideration of a case do not examine its factual circumstances on the merits, but limit themselves to establishing the formal conditions for application of the norm (Judgments of 6 June 1995 No. 7-II, of 13 June 1996 No. 14-II, of 28 October 1999 No. 14-II, of 22 November 2000 No. 14-II, of 14 July 2003 No. 12-II; Decision of 5 March 2004 No. 82-O).

5.1. Statutory prohibition of enforcement against plots of land owned by a citizen-debtor, when they are not used for entrepreneurial activity, requires examination beyond determination of whether a citizen has the status of an individual entrepreneur. It is also necessary to prescribe by law certain criteria of conformity of the disputed plots of land to this condition in order to make possible case-by-case determination of whether an activity conducted by a citizen-debtor is entrepreneurial or not (Subsection 3, Section 1, Article 2 of the Civil Code of the Russian Federation), including circumstances, when a citizen was provided with or acquired a plot of land for personal, family and other similar purposes, but in fact systematically uses it for gaining profit.

As it follows from the submitted materials, the courts of general jurisdiction, deciding that pursuant to Paragraph 3, Section 1, Article 446 of the Civil Procedure Code of the Russian Federation it was impossible to effect enforcement against the plots of land owned by citizens-debtors, had to limit themselves to a statement of fact that a citizen-debtor did not have a legal status of an individual entrepreneur. The courts were also forced not to take into account a number, overall area, value and gains from the use of the plots of land in question. Although, such examination was necessary to ensure the balance of interests of a debtor and a creditor (plaintiff) by virtue of Article 17 (Section 3) of the Constitution of the Russian Federation, which stipulates that the exercise of the rights and freedoms of man and citizen shall not violate the rights and freedoms of others.

Such legislative regulation contradicts the principles of enforcement proceedings, including priority protection of the interests of a creditor (plaintiff) since, unlike in the court proceedings, the enforcement proceedings are not adversary, and observance of the principle of equality of the participants of the enforcement proceedings is understood considering the necessity to restrict the proprietary rights of a debtor. Otherwise it is impossible to preclude an abuse of right by a *mala fide* citizen-debtor who, without having a legal status of individual entrepreneur, may freely invest financial resources (including those unlawfully aggregated through failure to perform civil obligations to creditors) into expensive plots of land, purchase them in unlimited quantities with any designated purpose (used for construction of a house, subsidiary farming, gardening, farming), including further resale.

At the same time, it is possible that the gains from the use of a plot of land in accordance with its designated purpose is a basic source of subsistence of a citizen-debtor, what predetermines an objective impossibility of satisfying claims under enforcement documents. In such cases the necessity to ensure the balance between the interests of a creditor and of a citizen-debtor requires protection of the latter rights not only through observance of minimum standards of protection by law, which reflect the use of exclusively legal measures of coercion aimed at performance of his obligations. Also this balance necessitates preservation of his and his dependants' due level of existence, so as not to leave them outside the boundaries of social life, including foreseen by law possibility to preserve property title to the plots of lands, which are not used for the entrepreneurial activity, if the gains from their use is a basic source of subsistence of a citizen-debtor and his dependants.

These conclusions conform to the principles provided by Article 1 of the Land Code of the Russian Federation, which determine the social foundations of land relations and preclude the possibility to extend the enforcement against the plots of land, which are the basic source of subsistence of a citizen-debtor and his dependants. Such interpretation is warranted by understanding of the property title to a plot of land as foundation of life and aimed at attainment of conditions for creating and preserving decent life and free development of personality within the framework of state duty to care about well-being of citizens and their social protection in accordance with declared in the Constitution of the Russian Federation purposes of the Russian Federation's policies as a social state.

While determining the limits of application of the property (enforcement) immunity in respect of plots of land, which are not used for entrepreneurial purposes, the legislator should take into consideration not only the absence of a status of an individual entrepreneur of a citizen-debtor, but general quantitative and qualitative characteristics, designated purpose and factual use of plots of land, to which a special legal regime relieving of recovery may be applied. Consequently, since the restriction of a debtor's rights is primarily related to enforced protection of a plaintiff, the legislator should aim to preserve a due level of existence of a citizen-debtor and his dependants.

5.2. Therefore, the provision of Paragraph 3, Section 1, Article 446 of the Civil Procedure Code of the Russian Federation, to the extent it prohibits recovery under the enforcement documents against the plots of land owned by a citizen-debtor under property title, which use is not related to entrepreneurial activity and which are not the basic source of subsistence of a debtor and his dependants providing them with a necessary level of existence, is an excessive and disproportionate to the aims of the constitutional significance restriction. It is an arbitrary restriction of both the proprietary rights of a creditor and of proper judicial protection guaranteed

by the Constitution of the Russian Federation, and that is why it is non-conforming to Article 17 (Section 3), 35 (Section 1), 45, 46 (Section 1) and 55 (Section 3) of the Constitution of the Russian Federation.

Concluding from the above and pursuant to Section 1 and 2, Article 71, Articles 72, 74, 75, 79, 87 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 Paragraph 3, Section 1, Article 446 of the Civil Procedure Code of the Russian Federation, to the extent it prohibits recovery under the enforcement documents against the plots of land owned by a citizen-debtor under property title, the use of which is not related to entrepreneurial activity and which are not the basic source of subsistence of a debtor and his dependants providing them with a due level of existence, as non-conforming to the Constitution of the Russian Federation and its Articles 17 (Section 3), 35 (Section 1), 45, 46 (Section 1) and 55 (Section 3).

Until the federal legislator enacts a new regulation of the matter the courts and other law-enforcement authorities should apply the Constitution Court of the Russian Federation directly, and follow the present Judgment, in order to prevent disproportionate restrictions of the proprietary rights of citizens-debtors and creditors, including the applicants in the present case as parties to civil transactions concerning the plots of land.

2. 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 or state officials.

3. Pursuant to Article 78 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation” this Judgment shall be published in the Collection of Laws of the Russian Federation and *Rossiyskaya Gazeta*. The Judgment shall also be published in the Bulletin of the Constitutional Court of the Russian Federation.

Constitutional Court
of the Russian Federation

No. 4-II