

IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT
OF THE RUSSIAN FEDERATION

Judgment
of 18 July 2008 No. 10-Π

in the case concerning the review of constitutionality of Paragraph 14, Article 3, and Section 3, Article 10 of the Federal Law “On Protection of the Rights of Legal Persons and Individual Entrepreneurs in the Course of State Control (Supervision)” in connection with complaints of V. V. Mikhailov.

Saint Petersburg, 18 July 2008

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

in the attendance of Permanent Representative of the State Duma to the Constitutional Court of the Russian Federation A. N. Kharitonov, 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 Article 125 (Section 4) of the Constitution of the Russian Federation, Subsection 3, Section 1, Sections 3 and 4 of Article 3, Subsection 3, Section 2 of 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 provisions of Paragraph 14 of Article 3 and Section 3 of Article 10 of the Federal Law “On Protection of the Rights of Legal Persons and Individual Entrepreneurs in the Course of State Control (Supervision)”.

The reason for the consideration of the case is a complaint of V. V. Mikhailov. The ground for the consideration of the case is the discovered uncertainty of whether the provisions of the Federal Law “On Protection of the Rights of Legal Persons and Individual Entrepreneurs in the Course of State Control (Supervision)” challenged by the applicant are in conformity with the Constitution of the Russian Federation.

Having heard the report of Judge-Rapporteur S. P. Mavrin, statements of the representatives of the party that enacted and signed the challenged Federal Law, interventions of M. Yu. Barshchevsky, Permanent Representative of the Government of the Russian Federation to the Constitutional Court of the Russian Federation, interventions by T. A. Vasiliyeva for the

Prosecutor General of the Russian Federation, A. N. Savinkov for the Ministry of Justice of the Russian Federation, V. R. Semerchuk for the Federal Agency for Technical Regulation and Metrology, K. N. Alyoshin for the Russian national non-governmental organization of small and medium business Foundation of Russia; and having considered written submissions and other materials, the Constitutional Court of the Russian Federation,

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

1. The Kursk Region Territorial Division (Inspectorate) of the Central Interregional Territorial Department of the Federal Agency for Technical Regulation and Metrology conducted an inspection of the fuel station owned by the individual entrepreneur V. V. Mikhailov and collected samples of motor petrol at the retail stage for expert examination. The chemical technical laboratory of the Federal State Institution “Kursk Center for Standardization, Metrology and Certification” examined these samples and discovered violation of the mandatory state standard for fuels and lubricants that are sold at retail; accordingly, an administrative offence report, provided for by Section 1, Article 19.19 of the Administrative Offences Code of the Russian Federation, was drawn up in respect of V. V. Mikhailov.

On 13 December 2006, the Arbitration Court of the Kursk Region found V. V. Mikhailov guilty of the above-mentioned administrative offence and imposed on him a penalty in the form of an administrative fine in the amount of 500 Russian rubles. On 26 April 2007, the judgment of the Arbitration Court of the Kursk Region was upheld and on 23 July 2007 by the 19th Arbitration Appellate Court; the costs of the examination and expert evaluation were recovered from V. V. Mikhailov in the amount of 12,138.66 Russian rubles on the basis of Paragraph 14, Article 3, and Section 3, Article 10 of the Federal Law “On Protection of the Rights of Legal Persons and Individual Entrepreneurs in the Course of State Control (Supervision)”.

V. V. Mikhailov challenges the constitutionality of the above-mentioned legal provisions stipulating that it is prohibited to collect costs of control (supervisory) measures from legal persons and individual entrepreneurs, except for reimbursement of expenses incurred by state control (supervisory) authorities as regards examinations (tests) and expert evaluations if they found a violation of the mandatory requirements; and further the challenged provision stipulate that state control (supervisory) authorities may recover reimbursement of these expenses in court. The applicant alleges that recovery of money from an individual entrepreneur on the basis of these provisions along with him being held administratively liable constitutes in fact a double punishment for the same offence and thereby it has a punitive, rather than compensatory, nature. The applicant requests to recognize these legal provisions as non-conforming to the Constitution of the Russian Federation, its Articles 35 and 50.

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 in respect of the subject matter indicated in the complaint and only in respect of the part of the act the constitutionality of which is challenged. Therefore, the subject matter of the present case is the interconnected provisions of Paragraph 14 of Article 3 and Section 3 of Article 10 of the Federal Law No. 134-ФЗ, “On Protection of the Rights of Legal Persons and Individual Entrepreneurs in the Course of State Control (Supervision)” of 8 August 2001, which establish, by way of exemption from the general rule, that the costs in the form of reimbursement of expenses incurred by the state control (supervisory) authority in the course of control measures for examinations (tests) and expert evaluations can be recovered from individual entrepreneurs in court if these authorities found a violation of the mandatory requirements set for the retail product.

2. According to the Constitution of the Russian Federation, the Russian Federation is a democratic rule of law state, and therefore free movement of goods, services and financial resources, support of competition, freedom of economic activity shall be guaranteed as the fundamentals of the constitutional order (Section 1, Article 1; Section 1, Article 8). Accordingly, Article 34 of the Constitution of the Russian Federation establishes that everyone shall have the right to freely use his abilities and property for entrepreneurial and other economic activities not prohibited by law, and Article 71 (“c”) lists the regulation and protection of the rights and freedoms of man and citizen as a competence of the Russian Federation.

Within the meaning of the above-mentioned constitutional provisions taken together with the provisions of Articles 2, 17, 18 and 45 (Section 1), the most favourable conditions for the operation of the whole economic system should be created in the Russian Federation. This presupposes the necessity to stimulate free and self-organizing activity of entrepreneurs as the most important actors in a market economy; to take special measures aimed at protecting their rights and lawful interests within the state regulation of the economy and thereby to achieve the constitutional aim of optimizing state interference in regulation of economic relations.

The federal legislator pursued this particular aim while formulating the basic principles of protection of the rights of legal persons and individual entrepreneurs in the course of state control (supervision) of compliance with the requirements set for goods (services) in the Federal Law “On Protection of the Rights of Legal Persons and Individual Entrepreneurs in the Course of State Control (Supervision)”.

However, pursuant to the constitutional principle of fairness, which requires *inter alia* to ensure a balance of the rights and duties of all the participants of market interaction, a balance should be found between the freedom given to persons who carry out entrepreneurial activities

and protection guaranteed to them, on the one hand, and the requirement of their responsible attitude to the rights and freedoms of those who are affected by their business activities, on the other. Proceeding from the above, the federal legislator exercises legal regulation in this area of competence of the Russian Federation by establishing the legal foundations of the single market and standards (Article 71, “g”, “p”, of the Constitution of the Russian Federation) with the purpose to protect the life and health of citizens, the property of individuals and legal persons, the property of the state and municipalities.

The provisions of the Law of the Russian Federation “On Protection of the Consumer’s Rights” aim at the same purposes which are determined by the Federal Law “On Technical Regulation”. Article 4 of this Law binds the seller (the performer), in case the law or the procedure under it establishes mandatory requirements for goods (service, work), to provide the consumer (customer) with goods (service, work) that meets such requirements (Section 5). At the same time, so far as entrepreneurial or other economic activity not prohibited by law is based on the presumption of *bona fide* actions of the participants in civil relations (Section 3, Article 10 of the Civil Code of the Russian Federation, Paragraph 2, Article 3 of the Federal Law “On Protection of the Rights of Legal Persons and Individual Entrepreneurs in the Course of State Control (Supervision)”, it is assumed that the entrepreneur (seller, performer) himself is authorized (obliged) to control compliance of retail products with the mandatory requirements. However, this does not and cannot preclude the existence of other forms of control of his activity, in particular, state control.

3. The control function of the state in its constitutional nature is derivative from its organizational and regulative influence on social relations, in particular in the sphere of civil transactions. Accordingly, the state is entitled and obliged to exercise the supervisory function in the sphere of economic relations as long as the competence of the Russian Federation includes regulation and protection of economic rights; establishing the foundations of the federal policy and legal foundations of the single market; federal economic development programmes, finance, currency, credit, custom regulation, federal economic services, civil legislation, standards, accounting (Article 71, “b”, “f”, “g”, “n”, “p”), and the joint competence of the Russian Federation and subjects of the Russian Federation includes protection of the rights and freedoms of man and citizen, possession, use, and disposal of land, water, and other natural resources, environmental management, protection of the environment and ensuring environmental safety, administrative, land, water, forestry legislation, legislation on mineral resources (Section 1 “b”, “c”, “e”, “j”, Article 72),.

As the Constitutional Court of the Russian Federation noted in Judgment No. 18-II of 1 December 1997, the control function is characteristic of all bodies of state power within the

scope of their competence, which implies that they are independent in exercising this function, and specificity of the forms of its exercise for each of them.

Within the meaning of Articles 10 and 114 of the Constitution of the Russian Federation, state control in the sphere of economic activity belongs to the domain of the executive branch, which is *inter alia* represented by territorial authorities of the Federal Agency for Technical Regulation and Metrology (in the area of administrative control of compliance with the mandatory requirements for products retailed by individual entrepreneurs). Imposing the control function on these authorities and vesting them with the powers to act in an authoritative and compelling manner, the federal legislator should comply with the requirements of certainty, clarity, lucidity of legal norms and their coherence with the system of legal regulation in force. This obligation stems from the constitutional principles of the rule of law state, among which the most important are the principles of equality and fairness (Judgments of the Constitutional Court of the Russian Federation No. 7-II of 6 April 2004 and No. 6-II of 31 May 2005).

3.1. Legal regulation of state control (supervision) as an institution of state power is exercised by the federal legislator in pursuance of the provisions of the Constitution of the Russian Federation, which refer the powers to establish a system of federal legislative, executive and judicial bodies, the rules for their organization and activities, establishing federal bodies of state power to the competence of the Russian Federation (Article 71 “d” of the Constitution of the Russian Federation), and the powers to establish common principles of organizing a system of bodies of state power and local self-government to the joint competence of the Russian Federation and subjects of the Russian Federation (Section 2 (“n”), Article 71). The same constitutional provisions cover the financial and economic fundamentals of state control (supervision). Pursuant to the legal opinion of the Constitutional Court of the Russian Federation expressed in Judgment No. 10-II of 15 December 2006, the principles concerning the economic fundamentals of activities of bodies of state power belong to the general basics of organization of the system of these bodies.

The federal legislator enjoys considerable discretion in determining specific types of state control (supervision), grounds, forms, modes, methods, procedures and time limits of control, array of state coercive measures taken as a result of the control activities, and specific ways of funding it. However, it is bound by the general constitutional principles of organization of the system of bodies of state power, and the regulation exercised by it should comply with the legal nature and the character of social relations in the area of state control (supervision). Restrictions on the rights and freedoms of individuals who carry out entrepreneurial activities should be

proportionate to the constitutionally significant aims and in any event should not create obstacles to their economic autonomy and initiative.

3.2. Within the meaning of the Constitution of the Russian Federation in its normative-doctrinal interpretation by the Constitutional Court of the Russian Federation, the state budget, as an inherent element of state power and at the same time emanation of financial and economic contents of state sovereignty, is a primary instrument of funding state activities. It is a public fund of financial resources comprised of tax and non-tax revenues and is aimed at guaranteeing financial autonomy and independence of state power and the very possibility for the state to exercise its powers and public functions vested in it by the Constitution of the Russian Federation and laws.

Accordingly, the Budget Code of the Russian Federation defines “the budget” as a form of aggregation and spending of money intended for financial support of the goals and functions of the state and local self-government (Article 6), and the Code establishes that the expenses of the budgets within the budgetary system of the Russian Federation are formed on the basis of expenditure obligations. These obligations are predetermined by the division of powers established by the Russian legislation between federal bodies of state power, bodies of state power of the subjects of the Russian Federation and bodies of local self-government; these powers are to be exercised pursuant to the legislation of the Russian Federation, international and other treaties and agreements, within the subsequent fiscal year (subsequent fiscal year and planned period) at the expense of the respective budgets (Article 65).

State expenses for the exercise of its constitutional functions are primarily covered by such essential part of the budget as taxes and duties, which, as the Constitutional Court of the Russian Federation has repeatedly highlighted, are an indispensable condition for the state to exist and which are a form of alienation of property with an aim to secure expenses of public power; however, these expenses are also covered through non-budgetary funds collected for specific public purposes, *inter alia* payment for public services provided to individuals and legal persons.

The constitutional principles of financial support of state power are also applicable to state control as one of the state functions of imperative nature. State control is exercised with an aim to secure constitutionally significant values and thus shall be funded from public funds through the state budgetary mechanism. Exceptions from this approach may be introduced only when state control is initiated by a person under control, or when it is necessary to enforce an obligation of a person under control to independently control compliance of goods (services) with the established requirements. In such cases state control is a peculiar public service

performed by a respective state authority, which implies compensation in one way or another by the person under control of the expenses incurred by this authority.

Therefore, state control in the sphere of economic activity and *inter alia* control of compliance of products retailed by individual entrepreneurs with the mandatory requirements shall be, as a general rule, covered by the budgetary funds formed either by taxes and duties or with the revenues from public services provided to persons under control.

3.3. According to the legal approaches elaborated by the Constitutional Court of the Russian Federation on the basis of Articles 57, 71 (“h”) and 75 (section 3) of the Constitution of the Russian Federation, the issue of the legal nature of compulsory payments, either tax or non-tax, has a constitutional aspect since it is related to the concept of “legally established taxes and duties”.

The fee prescribed by Paragraph 14, Article 3, and Section 3, Article 10 of the Federal Law “On Protection of the Rights of Legal Persons and Individual Entrepreneurs in the Course of State Control (Supervision)” and collected from individual entrepreneurs in the form of compensation of expenses incurred by the state control (supervisory) authority by conducting examinations (tests) and expert evaluations if a violation of the mandatory requirements set in respect of retailed products is found, belongs neither to taxes, nor to duties. At the same time, these compensatory payments are collected from the person under control in a coercive manner within court proceedings, which characterizes them as compulsory individually recompensated fiscal payments.

Providing constitutional assessment of payments of this kind, the Constitutional Court of the Russian Federation in Judgment No. 2-II of 28 February 2006 concluded that compulsory, pursuant to law, public payments to the budget, which are not taxes and do not fall under the definition of “duties” in the Tax Code of the Russian Federation, are not listed in it as such, but which are in their nature precisely fiscal duties, shall not fall outside the scope of Article 57 of the Constitution of the Russian Federation. Equally they shall fall within the scope of the legal opinions of the Constitutional Court of the Russian Federation specifying the above-mentioned constitutional provisions on the conditions for proper imposition of taxes and duties, which in respect of the duties received detailed regulation by the legislator, in particular in Section 3 of Article 17 of the Tax Code of the Russian Federation, which thus attains universal character.

When formulating the criteria for lawful collection of fiscal duties, the Constitutional Court of the Russian Federation noted that if prescribed by law compulsory budgetary payments do not have characteristics of a tax obligation within its constitutional meaning, but belong to non-tax fiscal duties, the question of exactly which elements of imposing a duty are to be determined by law shall be decided by the legislator himself giving due regard to the nature of

this duty. The legislator may use this duty as a public law means of funding a particular kind of activity, but only on condition of universal imposition of this duty on all subjects of the respective activity.

The individually recompensated payments, which are not fiscal duties, as a rule, may be only used by the legislator on condition that state authorities exercise, in respect of persons making these payments, specific actions (acts) which result in granting specific rights or permits and provided that these payments are aimed at compensating the expenses and additional costs incurred by the public authority (Decision of the Constitutional Court of the Russian Federation No. 14-O of 8 February 2001). These actions (acts) represent a particular kind of public services provided to individuals or legal persons, as a general rule, on the basis of voluntary application made by these persons with an aim to obtain benefits which are necessary for them and which might be enjoyed depending on the respective activities of state authorities representing public power (registration of rights, certification of goods and services, accreditation, etc.).

Reimbursement, under a court decision, of the expenses for examinations (tests) and expert evaluations made upon the initiative of territorial authorities of the Federal Agency for Technical Regulation and Metrology does not have the above-mentioned characteristics. In the first place the contract, on the basis of which they are conducted at the present time, is concluded by a research or expert organization not with an individual entrepreneur, but with a control authority irrespective of the individual entrepreneur's will. Further, this individual does not receive any benefit necessary to him. Consequently, it cannot be recognized as a compulsory, individually recompensated payment through which the person making the payment reimburses (compensates) the costs of the public service provided to him.

This conclusion is also supported by the Budget Code of the Russian Federation, its Paragraph 5, Section 3, Article 41, pursuant to which compensations and other funds received as recovery of damages caused to the state and other funds of compulsory recovery are categorized as non-tax budgetary revenues, received as a result of application of civil, administrative and criminal liability measures.

At the same time, reimbursement of the costs of examinations (tests) and expert evaluations initiated by territorial authorities of the Federal Agency for Technical Regulation and Metrology cannot be considered as either civil or administrative liability measures.

The functional purpose of this type of payments is compensation of the costs incurred by public authorities in exercise of control measures in respect of the persons under control. On this basis, the federal laws on the federal budget, *inter alia* the Federal Law "On the Federal Budget for 2006", treat these payments as budgetary revenues with a budgetary classification code assigning them to the revenues of the Federal Agency for Technical Regulation and Metrology

as the main administrator, and the Instruction on the Procedure of Implementing the Budgetary Classification of the Russian Federation (adopted by Ministry of Finance of the Russian Federation Order No. 74n of 24 August 2007) considers them to be revenues from providing paid services and compensations of state costs.

Thereby, reimbursement of the expenses incurred by state control (supervisory) authorities in connection with examinations (tests) and expert evaluations, if they found a violation of the mandatory requirements for products retailed by individual entrepreneurs, was given the characteristic of compensatory payment. However, since the legislator prescribed that the collection of these payments is conditioned by a violation of the mandatory requirements in the sphere of public legal relations by the person under control and indispensable and subject-to-compensation costs incurred by the control authority exercising state power (public) functions, there are clear characteristics of public taking of property of the person under control. This latter consideration precludes the possibility to consider this payment as a civil law liability measure.

Payment for examinations (tests) and expert evaluations, compensatory in its nature, when it is not differentiated according to the amounts of compensation of the expenses incurred by the state, cannot be indisputably considered as a public law liability measure. As the Constitutional Court of the Russian Federation observed, the punitive nature of these measures implies that the degree of punishment depends on the nature of the offence itself (its gravity, consequences, causes and the degree of the offender's guilt), but not on the amount of expenses incurred by the state to identify the fact of an offence (Judgments No. 20-II of 17 December 1996, No. 8-II of 11 March 1998, No. 11-II of 15 July 1999 and No. 7-II of 27 April 2001, Decisions No. 244-O of 14 December 2000 and No. 130-O of 5 July 2001). At the same time, compulsory recovery of state expenses from individual entrepreneurs in the amounts which are not differentiated and on the basis of the sole fact that the mandatory requirements for the products are violated, in its essence represents a strict liability of the individual entrepreneur, even if he complied with all the legal prescriptions for control over the requirements for the retailed products, he is obliged to reimburse the expenses of the state control (supervisory) authorities that conducted their own examinations (tests) or expert evaluations resulting in detecting a violation of the respective requirements.

Moreover, collection of money in order to reimburse the expenses of the state control (supervisory) authorities incurred in connection with examinations (tests) or expert evaluations, from individual entrepreneurs is founded on the identified fact of violation of the mandatory requirements established for retailed products. In some respect, these expenses are similar to the procedural expenses (costs) as they are aimed at gathering evidence of a committed offence. However, unlike procedural costs, they have a causal connection not with proving the fact that a

particular person committed an offence but with a regular control activity of the body of public power which is not predetermined by any prior discovery of elements of an offence and which does not legally depend on whether the control authority has any information about the committed offence.

Thus, reimbursement of expenses incurred by state control (supervisory) authorities for respective examinations (tests) or expert evaluations provided for in Paragraph 14, Article 3, and Section 3, Article 10 of the Federal Law “On Protection of the Rights of Legal Persons and Individual Entrepreneurs in the Course of State Control (Supervision)”, is essentially public law taking of the offender’s property, which follows the administrative punishment imposed on him, and is *de facto* similar to public law punishment. The amounts of money collected from individual entrepreneurs in order to reimburse (compensate) the expenses of the state control (supervisory) authorities possess – all at once – features of a compensation (payment) of the state’s expenses, features of payment of publicly purposeful nature and of a liability measure; however formally and legally they are neither taxes nor duties, nor fiscal payment, nor a civil law nor public law liability measure, nor a kind of procedural costs. All this demonstrates the uncertainty in both the issue of legal nature of this compulsory individually recompensated payment and the issue of legality (reasonableness) of its imposition and use for the purpose of financial support of the functions performed by public authorities.

3.4. The constitutional principles of the rule of law state require that the federal legislator choosing the means and ways of exerting legal influence on subjects of entrepreneurial activity relies on the areas of legal regulation existing in the Russian Federation and on the general principles of the respective areas of law, either public or private. At the same time it is entitled and obliged to take into consideration social, economic and other factors determining objective limits of its constitutional powers.

Exercising legal regulation in the area of state control (supervision) over compliance with the mandatory requirements for the products retailed by the individual entrepreneur, the federal legislator enjoys sufficiently wide discretion which allows him to envisage, in one way or another, reimbursement of the expenses of state control (supervisory) authorities for examinations (tests) and expert evaluations, *inter alia* by imposing a monetary burden on individual entrepreneurs which is proportionate to these expenses but not excessive so that the very possibility for them to continue the entrepreneurial activity is not jeopardized.

Determining the area of implementing the Federal Law “On Protection of the Rights of Legal Persons and Individual Entrepreneurs in the Course of State Control (Supervision)”, the federal legislator did not established the possibility to recover the costs of state control (supervisory) authorities in the course of all kinds of state control (supervision) exercised within

the scope of the wide range of supervisory relations between the state and business entities, including tax and customs control (Section 3 of Article 1), i.e. introducing differentiation of relations in state control activities in the economic sphere, the legislator allowed legal regulation to be unclear and uncertain.

Equally, the Federal Law “On Protection of the Rights of Legal Persons and Individual Entrepreneurs in the Course of State Control (Supervision)” did not provide specific time limits within which the state control (supervisory) authority is entitled to initiate the procedure of taking monetary resources, especially considering that within the literal meaning of Paragraph 14, Article 3, and Section 3, Article 10 of this Federal Law, it is its right and not an obligation to file a lawsuit aimed at recovery of the expenses. Consequently, state control (supervisory) authorities are *de facto* vested with unlimited discretion in both involuntary taking of monetary resources from individual entrepreneurs, the period during which it can be exercised, and in respect of criteria to determine the maximum amounts of monetary resources which can be recovered and the peculiarities of subjects of entrepreneurial activity (individual entrepreneurs and legal persons) that should be taken into consideration.

The interconnected provisions of Paragraph 14, Article 3, and Section 3, Article 10 of the Federal Law “On Protection of the Rights of Legal Persons and Individual Entrepreneurs in the Course of State Control (Supervision)”, establishing grounds and a procedure of reimbursement of expenses of state control (supervisory) authorities for examinations (tests) and expert evaluations, do not meet the requirements of certainty, clarity, lucidity of legal norms and their coherence with the system of legal regulation in force and thereby give rise to contradictory law-enforcement practice: courts qualify the legal measure established therein as both measures of public law liability, which is punitive by its nature, and civil law reimbursement of expenses incurred by the state, i.e. as both public law and private law means of exerting influence upon individual entrepreneurs retailing products that do not meet the mandatory requirements.

Besides, the uncertainty that has arisen in the system of legal regulation in force in relation to the obligation of individual entrepreneurs who violated the mandatory requirements set for retailed products, to compensate the examination and evaluation expenses of state control (supervisory) authorities, in practice can lead to a situation where, in violation of the general legal principle “*non bis in idem*”, reflected in Article 50 (Section 1) of the Constitution of the Russian Federation, this public law taking of property is imposed on the individual entrepreneur in addition to administrative punishment.

3.5. Therefore, by permitting, due to their uncertainty, arbitrary law-enforcement decisions taken by state control (supervisory) authorities, the provisions of Paragraph 14,

Article 3, and Section 3, Article 10 of the Federal Law “On Protection of the Rights of Legal Persons and Individual Entrepreneurs in the Course of State Control (Supervision)” create conditions for violation of the constitutional principles of the rule of law state and the requirements of certainty, consistency, lucidity, and completeness of the normative regulation of powers and a procedure for the activity of subjects of public power which are aimed at ensuring stability of business transactions. Thus they do not conform to the Constitution of the Russian Federation and its Articles 19 (Section 1), 34 (Section 1), 35 (Sections 1 and 2) and 55 (Section 3).

The federal legislator exercising legal regulation in this area of social relations pursuant to the requirements of the Constitution of the Russian Federation and subject to the present Judgment, may either impose a special non-tax duty on all individual entrepreneurs or introduce specific administrative liability measures (for example, the amounts of fines which are higher than those existing now), or to provide for any other ways of compensation of expenses incurred by state control (supervision) authorities for examinations (tests) and expert evaluations initiated by them, *inter alia* in cases where the individual entrepreneur does not fulfill his legal duty to exercise self-control of whether the products retailed by him meet the mandatory requirements.

At the same time, the possibility to recover the costs incurred by state control (supervision) authorities for examinations (tests) and expert evaluations resulting in detection of violations of the mandatory requirements is an additional incentive for individual entrepreneurs to exercise self-control over the compliance of products retailed by them with the mandatory requirements, and within the existing system of administrative sanctions serves as a deterrent for low-quality products to be retailed. If Paragraph 14, Article 3, and Section 3, Article 10 of the Federal Law “On Protection of the Rights of Legal Persons and Individual Entrepreneurs in the Course of State Control (Supervision)”, lose their legal force immediately in the absence of other, due legal mechanisms, the level of state guarantees for the protection of the lawful economic interests of individuals and legal persons, purchasers of the products, may be decreased. Therefore, the Constitutional Court of the Russian Federation, taking into consideration Subsection 12, Section 1, Article 75, Articles 79 and 80 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, considers it possible to prescribe that the provisions of the Federal Law “On Protection of the Rights of Legal Persons and Individual Entrepreneurs in the Course of State Control (Supervision)”, recognized as non-conforming to the Constitution of the Russian Federation by the present Judgment, shall lose their force from 1 January 2009.

Concluding from the above and pursuant to Sections 1 and 2 of Article 71, Articles 72, 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 interconnected provisions of Paragraph 14 of Article 3 and Section 3 of Article 10 of the Federal Law “On Protection of the Rights of Legal Persons and Individual Entrepreneurs in the Course of State Control (Supervision)” to the extent that they establish a possibility to recover expenses incurred by state control (supervisory) authorities for examinations (tests) and expert evaluations if they found violations of mandatory requirements from individual entrepreneurs upon a claim of this authority as non-conforming to the Constitution of the Russian Federation, its Article 19 (Section 1), 34 (Section 1), 35 (Sections 1 and 2) and 55 (Section 3).

2. The provisions of Paragraph 14, Article 3, and Section 3 of Article 10 of the Federal Law “On Protection of the Rights of Legal Persons and Individual Entrepreneurs in the Course of State Control (Supervision)”, recognized as non-conforming to the Constitution of the Russian Federation by the present Judgment, shall lose their force from 1 January 2009.

3. The case of V. V. Mikhailov shall be reconsidered according to the established procedure, if there are no other obstacles to it.

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

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