

IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT
OF THE RUSSIAN FEDERATION

Judgment
of 13 March 2008 No. 5-II

in the case concerning the review of the constitutionality of the provisions of Subsections 1 and 2, Section 1, Article 220 of the Tax Code of the Russian Federation, in connection with complaints of S. I. Anikin, N. V. Ivanova, A. V. Kozlov, V. P. Kozlov, and T. N. Kozlova.

Moscow, 13 March 2008

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

in the attendance of S. I. Anikin; Representative of the State Duma D. D. Tsabiya, PhD in Law, Representative of the Council of the Federation Ye. V. Vinogradova, PhD in Law, Plenipotentiary Representative of the President of the Russian Federation to the Constitutional Court of the Russian Federation M. V. Krotov,

pursuant to Section 4, Article 125 of the Constitution of the Russian Federation, Subsection 3, Section 1, 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 certain provisions of Subsections 1 and 2, Section 1, Article 220 of the Tax Code of the Russian Federation.

The reason for the consideration of the case is complaints of S. I. Anikin, N. V. Ivanova, A. V. Kozlov, V. P. Kozlov, and T. N. Kozlova. The ground for the consideration of the case is the discovered uncertainty of whether the provisions challenged by the applicants are in conformity with the Constitution of the Russian Federation.

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

Having heard the report of Judges-Rapporteurs G. A. Gadzhiev and A. Ya. Sliva, statements by the parties’ representatives, the expert opinion of I. A. Tzindeliani, PhD in Law;

interventions by Plenipotentiary Representative of the Government of the Russian Federation to the Constitutional Court of the Russian Federation M. Yu. Barshchevsky for the Government of the Russian Federation, A. G. Kalugin for the Prosecutor General of the Russian Federation; and having considered written submissions and other materials, the Constitutional Court of the Russian Federation

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

1. Paragraph 4, Subsection 2, Section 1, Article 220 of the Tax Code of the Russian Federation (as in force before amendments introduced by Federal Law No. 112-Φ3 of 20 August 2004), established *inter alia* that when possessions are purchased as common shared property the amount of property deduction from the personal income tax calculated under this Subsection shall be distributed among the co-owners according to their shares in the property.

N. V. Ivanova, who challenges the constitutionality of the abovementioned legal provision, purchased a flat under a sale and purchase agreement and was issued a certificate of state registration of her and her minor son's shared property titles to the immovable property. In April 2004, she applied to Inter-District Inspectorate No. 2 of the Ministry of Taxes and Duties of the Russian Federation in the Karelia Republic for personal income tax property deduction equal to the sum spent for the purchase of the flat (in the amount of actually incurred expenses) as is provided by Subsection 2, Section 1, Article 220 of the Tax Code of the Russian Federation. After an office tax audit of N. V. Ivanova's tax return, the tax authority partly denied property deduction from taxes in the amount due to her son. The Segez' Town Court of the Republic of Karelia granted the applicant's lawsuit aimed at recognizing the tax authority's decision as unlawful, but the Judicial Section for Civil Cases of the Supreme Court of the Republic of Karelia overruled the judgment of the first instance court. The cassation instance court delivered a new judgment to reject the applicant's lawsuit where it reasoned that an underage child does not have the right to property deduction from taxes and that the legislation on taxation does not provide that the taxpayer acquires the right for this deduction in case he purchases possessions in the interest of other persons, including underage children.

In N. V. Ivanova's opinion, the legal provision applied in her case with regard to the meaning attributed to it in the law-enforcement practice, is not in conformity with Articles 7, 15 (Section 4), 17, 18, 19 (Section 2), 38 (Section 2), 40 (Section 1) and 60 of the Constitution of the Russian Federation, because it deprives her and her minor son of the right to property deduction from the personal income tax on the actual expenses incurred by the purchase of the flat.

S. I. Anikin challenges the constitutionality of the provision of Paragraph 4, Subsection 1, Section 1, Article 220 of the Tax Code of the Russian Federation (as in force before amendments introduced by the Federal Law No. 112-Φ3 of 20 August 2004), according to which when common shared property is sold the amount of the property deduction from taxes calculated under this Subsection shall be distributed among the co-owners in amounts proportional to their shares.

The applicant owned a share of 1/10 in the flat for a period of less than five years, jointly with I. L. Kusnetsova, who owned a share of 9/10 in the flat for more than five years. After the flat was sold in October 2003, S. I. Anikin expected to be granted property deduction from taxes in the amount he received from the sale of his share. But Inspectorate No. 27 of the Federal Tax Service for the city of Moscow considered that the amount of the tax deduction should be limited to one tenth of its maximum limit, i.e. proportionally to his share in the sold flat, and charged S. I. Anikin with an additional personal income tax for the year 2003. By the judgment of the Zyuzino District Court of Moscow, which was upheld by a decision of the Judicial Section for Civil Cases of the Moscow City Court, the amounts of the personal income tax, penalty interests and fines were recovered from the applicant. The Moscow City Court and the Supreme Court of the Russian Federation, to which he submitted supervisory complaints, did not find any grounds for requesting the case and its supervisory review.

The constitutionality of the provision of Paragraph 4, Subsection 1, Section 1, Article 220 of the Tax Code of the Russian Federation, as amended by Federal Law No. 112-Φ3 of 20 August 2004, is challenged by A. V. Kozlov, V. P. Kozlov, and T. N. Kozlova. In 2005, they sold a flat, which they had owned as common shared property with equal shares since 2004, and each of the applicants acquired their income. Inspectorate No. 2 of the Federal Tax Service for the Central Administrative District of Omsk denied them property deduction from taxes in the amounts of income actually received by them on the grounds that property deduction from taxes should be distributed among the co-owners of the flat proportionally to their shares. The Kuybyshevsky District Court of Omsk, by its judgment of 21 August 2006 upheld by the Judicial Section for Civil Cases of the Omsk Regional Court, rejected the applicants' claim for recognizing the tax authority's decision as unlawful. The Omsk Regional Court and the Supreme Court of the Russian Federation, to which the applicants submitted supervisory complaints, did not find any grounds for requesting the case and its supervisory review.

In the opinion of S. I. Anikin, A. V. Kozlov, V. P. Kozlov and T. N. Kozlova, the legal provision applied in their cases is not in conformity with the Constitution of the Russian Federation, its Articles 6 (Section 2), 7 (Section 1), 18, 19 (Sections 1 and 2) and 57, because it allows to distribute property deduction from taxes among the taxpayers-owners with no account

taken of the actual income received by each of them and because it puts the taxpayers who sold their shares in the flat and who are applying for property deduction from taxes in an unequal position as compared to the taxpayer who sold the flat as a whole.

Therefore, the subject matter in the present case is the normative provisions of Paragraph 4, Subsection 1, Section 1, Article 220 of the Tax Code of the Russian Federation as in force before it was amended by Federal Law No. 112-Φ3 of 20 August 2004 and as amended by Federal Law No. 112-Φ3 of 20 August 2004 (now Paragraph 3) and Paragraph 4, Subsection 2, Section 1, Article 220 of the Tax Code of the Russian Federation as in force before it was amended by Federal Law No. 112-Φ3 of 20 August 2004 (now Paragraph 18), which establish, for the sale and purchase of a flat as an object of common shared property, a procedure for distribution of property deduction from taxes calculated under Subsections 1 and 2, Section 1, Article 220 of the Tax Code of the Russian Federation, among the co-owners proportionally to their shares (for sale of property) and according to their share (shares) in the property (for purchase of property).

2. Pursuant to Article 57 of the Constitution of the Russian Federation, everyone must pay legally established taxes and duties.

Normative regulation of taxes and duties is exercised by the legislator who, as follows from Articles 71 ('g', 'h'), 72 (Section 1 ('j')) and 75 (Section 3) of the Constitution of the Russian Federation taken together with its Article 114 (Section 1 'b'), has the right to determine a tax policy to support certain aims, including the creation of favourable conditions to exercise the right to housing (Article 40, Section 1 of the Constitution of the Russian Federation) and state support of the family, motherhood, fatherhood and childhood (Article 7, Section 2 of the Constitution of the Russian Federation). In exercising, within the scope of his discretionary powers, the normative regulation of establishing taxes, introducing taxes, collecting them, and determining taxation principles for a particular tax, the legislator must take account of the principles enshrined in the Constitution of the Russian Federation and serving as the fundamentals of the constitutional order. They are the principles of rule of law and a social state (Article 1, Section 1; Article 7), the principles of equality before the law and the court (Article 19, Section 1) and of proportionality (Article 55), which limit his discretion in this area.

Thus, pursuant to Article 19 of the Constitution of the Russian Federation taken together with its Article 57, taxes and duties shall not be discriminatory and shall not be applied differently depending *inter alia* on the property status and other circumstances. As the Constitutional Court of the Russian Federation stated in Judgment No. 7-II of 27 April 2001, the principle of equality before the law and the court guarantees equal rights and obligations for persons belonging to the same category and does not exclude the possibility of establishing

different conditions for different categories of persons; these differences, however, may not be arbitrary and should be based on objective characteristics of the respective categories of persons.

In taxation, equality is primarily understood as an equal extent, neutrality and fairness of taxation. Equal economic results of the taxpayers' activities shall entail an equal tax burden, and the principle of an equal tax burden is violated when a certain category of taxpayers finds itself in different conditions as compared to other taxpayers, provided that there is no considerable difference between them justifying unequal legal treatment. Where taxpayers (especially if these are payers of the personal income tax) have equal paying capacity shall bear an equal tax burden.

3. As follows from the legal opinion of the Constitutional Court of the Russian Federation expressed in Judgment No. 7-II of 24 February 1998, genuine equality of people may only be ensured if the person's actual capacity (depending on his wage, income) to pay public law mandatory payments in full is taken into account. The personal income tax burden imposed on taxpayers pursuant to the essence of this kind of tax and to the imperatives that follow directly from the Constitution of the Russian Federation shall be determined in a manner allowing to reduce the gross revenue by tax deductions prescribed by law, so that only the so-called "net income" is taxable.

The Tax Code of the Russian Federation defines "income" for purposes of the personal income tax as an economic benefit received as money or in kind, accounted if it may be appraised and to the extent that it may be appraised, and determined under the Chapter "Personal Income Tax" of the Code (Article 41). For taxable income purposes under Section 1, Article 224 of this Code, the tax rate is set at 13 percent and the tax base to be determined is the monetary equivalent of the taxable income decreased by the amount of tax deductions provided by Articles 218–221 of the Code with regard to peculiarities provided by this Chapter (Section 3, Article 210).

To incentivize people to improve their housing conditions, the federal legislator established, in Article 220 of the Tax Code of the Russian Federation, the right of personal income tax payers to be granted property deduction from taxes for the sale and purchase transactions with a residential house, a flat, or a room (since 1 January 2007) or with a share (shares) in them, and established grounds, a procedure and an amount of tax deductions to be granted. Two types of deductions can be distinguished depending on whether the possessions are transferred to or from the taxpayer: property deduction from taxes in the amount received by the taxpayer in the taxable period from the sale of property, and property deduction from taxes in the amount spent by the taxpayer for the purchase of housing.

For the sale of residential immovable property, Subsection 1, Section 1, Article 220 of the Tax Code of the Russian Federation establishes two methods of property deduction from the

calculated taxes depending on how long the taxpayer owned the property. If, for example, the flat was in the taxpayer's property for less than three years (before 1 January 2005, five years), the property deduction from the taxes shall be granted in the amount received by the taxpayer in the taxable period from the sale of this flat, but not more than 1,000,000 Russian rubles. If the taxpayer owned his property for a longer period, the other method of calculation shall be applied, namely the amount of property deduction from the taxes shall be equal to the amount of income received from the sale of the property. Thus the amount of income received from the sale of the property shall be decreased by the same amount of property deduction from taxes, i.e. the whole income is exempted from taxation.

The purpose of the property deduction from taxes granted under Subsection 2, Section 1, Article 220 of the Tax Code of the Russian Federation, is to provide individuals with a tax benefit if they build or purchase, in the territory of the Russian Federation, a residential house, a flat, a room (since 1 January 2007) or a share (shares) in them. In determining the tax base, the taxpayer has the right to be granted property deduction from taxes in the amount of the actual expenses incurred by him, but not more than 1,000,000 Russian rubles, and in the amount aimed to cover the interest on special purpose loans (credits) received from credit institutions and other organizations of the Russian Federation, which he actually spent for the construction or purchase of the immovable property.

The provisions of Subsections 1 and 2, Section 1, Article 220 of the Tax Code of the Russian Federation, establishing a procedure of distributing property deductions from taxes among the co-owners of common shared property provide that in case of sale of this property the property deduction from taxes shall be distributed among the co-owners proportionally to their shares, and in case of purchase of common shared property, according to their share (shares) in the property.

4. Tax obligations of individuals are a direct result of their economic activity and are inseparably linked to it. Tax obligations, as a rule, are preceded by civil law relations of individuals, i.e. tax obligations are based on civil-law relations or are closely linked to them. Accordingly, the Tax Code of the Russian Federation establishes that institutions, concepts and terms of the civil, family and other areas of legislation of the Russian Federation used in the Code shall be applied in the meaning attributed to them by the respective area of legislation, except as otherwise provided by the Tax Code of the Russian Federation.

The Housing Code of the Russian Federation establishes that objects of housing rights are living premises, i.e. isolated premises which are immovable property and which are suitable for permanent residence of individuals, i.e. comply with the established sanitary standards, technical rules and norms, and other legislative requirements (Sections 1 and 2, Article 15). Under

Section 1, Article 16, a residential house, a part of a residential house, a flat, a part of a flat, or a room may be considered living premises, consequently, the housing legislation does not consider a part of a room to be a separate object of housing relations.

Pursuant to the Civil Code of the Russian Federation, possessions which belong to two or more persons are owned by them under the right of common property; the share of each co-owner in the right of common property may be either determined (shared property) or not determined (joint property); common property exists where two or more persons acquire possessions which cannot be divided without alteration of its designation (indivisible things) or may not be divided under law; common property of divisible things exists in cases provided by law or contract (Sections 1–4, Article 244); the co-owner of common shared property has the right to partition of his share in the common property; if the co-owners of common property have not reached agreement on the manner and conditions of separating common possessions or about partition of the share of one of them, the co-owner of common shared property has the right to request a court to partition in kind his share of the common possessions (Sections 2 and 3, Article 252); common possessions in common shared property shall be disposed of upon the consent of all the co-owners, but each of them has the right to dispose of his share in the right of common property on his own, provided that the right of priority purchase of other participants of common shared property is respected (Article 246); the sizes of the co-owners' shares are decisive in determining their proprietary relations both in distribution of income received from the disposal of the property and in bearing expenses of its maintenance (Articles 248 and 249). As follows from the abovementioned legal provisions, the term “share” in the Civil Code of the Russian Federation includes not only a share in possessions, but also a share in the right of common shared property.

4.1. According to the principle of freedom of contract (Section 1, Article 1 of the Civil Code of the Russian Federation), individuals who have possessions in common shared property have the right to conclude civil law contracts to sell their possessions. The Tax Code of the Russian Federation, pursuant to Section 2, Article 38, understands “possessions” as objects of civil rights (except for proprietary rights) which are referred to as possessions in the Civil Code of the Russian Federation.

Within the meaning of Subsection 1, Section 1, Article 220 of the Tax Code of the Russian Federation, individuals have the right to be granted property deduction from taxes in the amount not exceeding 1,000,000 Russian rubles (provided that the property was owned for less than three years) after the sale of either living premises which are a single object of the right of common shared property, or shares partitioned in kind to these individuals as an object of individual, not common property. This Subsection, apart from the exhaustive list of living

premises the sales of which is the ground for the right to property deduction from taxes, stipulates a possibility to be granted a deduction in case of sale of “other possessions” in the amount not exceeding 125,000 Russian rubles, provided these “other possessions” were owned by the taxpayer for less than three years, or in the amount received by the taxpayer from the sale of “other possessions” if they were owned by the taxpayer for three years or more.

Therefore, the Tax Code of the Russian Federation does not exclude the possibility to sell both residential immovable property, which is owned commonly as a single object, and a share in this property partitioned in kind (subject to restrictions established by the housing legislation), and a share in the right of common shared property concerning these possessions. In this context, the right to property deduction from taxes depends on the object of the civil law sale and purchase contract.

Paragraph 4, Subsection 1, Section 1, Article 220 of the Tax Code of the Russian Federation as in force before it was amended by Federal Law No. 112-Φ3 of 20 August 2004 stipulates that for the sale of possessions in common shared property, the amount of the property deduction from taxes shall be divided among the co-owners of these possessions proportionally to their shares. While Paragraph 4, Subsection 2, Section 1 of the same Article stipulates that for the purchase of possessions in common shared property, the amount of the property deduction from taxes shall be divided among the co-owners in accordance with their shares in the property. Article 249 of the Civil Code of the Russian Federation stipulates that each participant of common shared property is obliged to contribute to tax payments proportionally to his share. The mentioned provisions in their systemic connection imply that they shall be applied only to the sale of immovable property as a single object of the right of common shared property. When, under a single sale and purchase contract, individuals sell their shares in possessions partitioned in kind and these shares are separate objects of the individual right of property, the provision of Paragraph 4, Subsection 1, Section 1, Article 220 of the Tax Code of the Russian Federation, is not applicable.

Actual division of such possessions as a flat is permissible if it may be partitioned in kind. In case of a partition the common shared property relations are terminated. Paragraph 5, Subsection 1, Section 1, Article 220 of the Tax Code of the Russian Federation (as amended by Federal Law No. 112-Φ3 of 20 August 2004), is systemically linked with the norms of the civil and housing legislation and it permits property deduction from taxes to be granted for the sale of shares, in particular, in a residential house or a flat. This provision implies that this deduction may be granted in full if a separate object of a sale and purchase agreement is a partitioned in kind share in a residential house or a flat.

Since the share in the right to an immovable object (in the present case, a residential immovable object) differs considerably in its actual characteristics and value from the single right to the same object, that can be individualized and deemed as a separate object of the right of property, the amounts of property deductions from taxes may differ depending on what exactly the taxpayer is selling – living premises, or a partitioned in kind share in the premises, or a share in the right of common shared property to the premises, and, accordingly, for the sale of what the taxpayer expects to be granted property deduction from taxes.

As to the distribution of property deductions from taxes among the co-owners purchasing a flat as common shared property, the Constitutional Court of the Russian Federation, in its Decision No. 63-O of 10 March 2005, reached the conclusion that under Subsection 2, Section 1, Article 220 of the Tax Code of the Russian Federation, the property deduction from taxes shall be equal to the total amount of expenses incurred by all the co-owners of the common shared property. The amount of property deduction from taxes shall be distributed among the co-owners according to their shares in the property, but within the limit of 600,000 Russian rubles (and since 2003, within the limit of 1,000,000 Russian rubles), i.e. proportionally to their respective shares.

As the Constitutional Court of the Russian Federation stated, this arrangement equates individuals who are co-owners of common shared property with individuals who are sole owners of a residential house or a flat. The total amount of property deduction from taxes granted both to the co-owners of common shared property and to the sole owner of a residential house or a flat stays within a unified maximum limit. Otherwise, if each co-owner of common shared property were granted property deduction from taxes equal to the property deduction from taxes granted to the sole owner of a residential house or a flat, the total amount of property deduction from taxes of all the co-owners of the common shared property could be several times higher than the amount of the property deduction from taxes granted to the sole owner of a residential house or a flat, which is not permissible in the light of the constitutional principles of equality and fairness in taxation.

According to this legal opinion, property deduction from taxes shall be granted for an object of immovable property, and therefore, in case of sale of a flat which is in common shared property, it shall be distributed among the co-owners proportionally to their shares. The possibility to pay the full amount of property deduction from taxes, i.e. 1,000,000 Russian rubles, to each of the co-owners of the sold immovable property is not prescribed by law.

As to the requirement to determine the amount of property deduction from taxes for the sale of a flat in common shared property or its share (shares) depending on how long the taxpayer owned this flat or its share (shares), this legal mechanism complies with the imperative

of Article 249 of the Civil Code of the Russian Federation, which obliges the co-owners of common shared property to bear expenses for maintenance of the common shared property proportionally to their shares. It is a prerogative of the legislator to determine the amount of property deduction from taxes and prescribe a method of its calculation when different co-owners of common shared property own their shares for different periods of time.

Therefore, the provision of Paragraph 4, Subsection 1, Section 1, Article 220 of the Tax Code of the Russian Federation, as in force before it was amended by Federal Law No. 112-Φ3 of 20 August 2004, is in conformity with the Constitution of the Russian Federation since in a systemic link with Paragraph 1 of this Subsection it is applicable to the disposal of possessions which are in common shared property as a single object of the right of property. The provision of Paragraph 4, Subsection 1, Section 1, Article 220 of the Tax Code of the Russian Federation, as amended by Federal Law No. 112-Φ3 of 20 August 2004 is also in conformity with the Constitution, since in a systemic link with Paragraph 1 of the same Subsection, the “shares” are understood as shares in the right of common shared property.

4.2. The Constitution of the Russian Federation declaring, in Article 2, that an individual, his rights and freedoms are the supreme value, and recognition, observance and protection of the rights and freedoms of man and citizen is a duty of the State specifies the nature of the Russian Federation as a rule of law state (Article 1). Pursuant to Article 2 of the Constitution of the Russian Federation, stipulating priority of the individuals’ rights as one of the most significant constitutional aims, Subsection 7, Article 3 of the Tax Code of the Russian Federation, establishes that all irremediable doubts, contradictions and lack of clarity in acts on taxes and duties shall be interpreted in favour of taxpayers. This provision is one of the fundamentals (principles) of the legislation on taxation.

Provided that elimination of contradictions and lack of clarity in legislative acts on taxes and duties is to be exercised primarily by arbitration courts and courts of general jurisdiction, one of the functions of constitutional proceedings (as defined by the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”) is to eliminate lack of certainty in legislative norms, *inter alia* through their constitutional interpretation. In order to ensure unified, non-contradictory legal regulation, the ambiguity in understanding Paragraph 4, Subsection 2, Section 1, Article 220 of the Tax Code of the Russian Federation, may be removed by its systemic interpretation with due regard to the hierarchy of norms in the legal system, which implies consideration of the legislative intent and interpretation of inferior level norms in accordance with superior level norms (among these superior level norms are the constitutional principles).

Subsection 2, Section 1, Article 220 of the Tax Code of the Russian Federation, provides for property deduction from taxes based on the purchase of immovable property – a residential house, a flat, a room, or a share (shares) in them. This tax deduction is aimed at reducing income included in the taxable base (Article 210 of the Tax Code of the Russian Federation) for taxpayers who purchased the abovementioned immovable property. The list of possessions the purchase of which entitles to property deduction from taxes is exhaustive.

The norms of Subsection 2, Section 1, Article 220 of the Tax Code of the Russian Federation, considered in the context of other norms of the Tax Code of the Russian Federation, including Articles 210, 218 and 219 establishing standard and social deductions from taxes, have a particular social and economic purpose, namely, to stimulate individuals' efforts to improve their housing conditions. Accordingly, each taxpayer should have the right to a refund of the part of personal income tax he paid, and the amount of this refund depends on the actual expenses incurred by the taxpayer in the purchase of a residential house or a flat. Unlike property deduction from taxes in the sale of residential immovable property possessed by the taxpayer for three years or more, which is granted by the Tax Code of the Russian Federation, the total amount of property deduction from taxes in the purchase of residential immovable property cannot exceed 1,000,000 Russian rubles, which amount does not include sums paid as repayment of the interest on special purpose loans (credits).

The general approach of the Tax Code of the Russian Federation (Articles 19, 21 and 207) is that the right to property deduction from taxes is a right of the taxpayer. It is the taxpayer who has to spend his own money and has to purchase an object of immovable property in order to be granted property deduction from taxes. This norm of Paragraph 4, Subsection 2, Section 1, Article 220 of the Code must be considered in conjunction with the respective norms of the Civil Code of the Russian Federation and the Family Code of the Russian Federation.

According to the Civil Code of the Russian Federation, the individual's civil legal capacity exists from his birth (Article 17), and in particular it includes the capacity to have a title to possessions (Article 18); the capacity to acquire and exercise civil rights and to create and perform civil obligations by his own actions (full (active) legal capacity) from the age of majority, i.e. when he reaches the age of eighteen years (Section 1, Article 21). For underage children, who have not reached the age of fourteen (minors), transactions (actions aimed at the acquisition, alteration or termination of civil rights and obligations) on their behalf may be concluded only by their legal representatives (primarily parents); legal representatives may be held liable under these transaction unless they can prove that the obligation was violated without their fault (Article 28). The Family Code of the Russian Federation establishes that a child is a person who has not reached the age of eighteen, i.e. the age of majority (Section 1, Article 54);

the child has the right to protection of his rights and lawful interests; protection of the rights and lawful interests of a child is exercised primarily by his parents (Section 1, Article 56); parents are legal representatives of their children and defend their rights and interests in relations with any individuals or legal persons (Section 1, Article 64).

Article 38 (Sections 1 and 2) of the Constitution of the Russian Federation, according to which the family enjoys State protection, and care for children and their upbringing are equally the right and duty of the parents, implies both positive obligations of the State to provide support, in particular financial support, to families, and constitutional obligations of parents towards their children. The performance of these obligations by parents may not cause inequality in taxation due to errors in collection of taxes.

Underage children as participants in common shared property relations are obliged, pursuant to the Civil Code of the Russian Federation, to bear a burden of maintenance of their possessions (Article 210), in particular to participate in tax payments for the property (Articles 249), which implies the obligation of their parents to make necessary legal actions on their behalf, including those related to the obligation to pay taxes.

Giving regard to the general purpose of legal regulation of tax deductions and their systemic link to the provisions of Subsection 2, Section 1, Article 220 of the Tax Code of the Russian Federation, as it established the right to property deduction from the personal income tax, the legislator had in mind only taxpayers who spend their own money for the purchase of immovable property and thereby acquire this right. Underage children, although they bear a tax burden as owners, may not be regarded as fully independent in tax relations. Pursuant to law, they are not able to independently make legal actions regarding property and therefore they may not be independent payers of the personal income tax in full.

Considering the constitutional principle of an equal tax burden, taxation of income requires not only a particular taxpayer's economic position to be taken into account, but also the economic position of the underage members of his family. However, the right to the full amount of property deduction from taxes for the taxpayer who at his expense purchased immovable property jointly with his underage children is not provided by the Tax Code of the Russian Federation. This leads to infringement of the rights of these taxpayers.

Parents who have underage children and who spend their own money to purchase immovable possessions for common shared property with their children *inter alia* when common shared property relations exist under the mandatory requirements of law, constitute a separate category of taxpayers. Pursuant to the constitutional principle of equality in taxation, which is a basis for the legislation on taxes and duties (Section 1 of Article 3 of the Tax Code of the

Russian Federation), this category of taxpayers may not be put into a less favourable position than other payers of the personal income tax.

Therefore, Paragraph 4 of Subsection 2, Section 1, Article 220 of the Tax Code of the Russian Federation, as in force before it was amended by Federal Law No. 112-Φ3 of 20 August 2004 (now Paragraph 18), taken together with other provisions of the Code, Articles 17, 18, 21, 28, 210 and 249 of the Civil Code of the Russian Federation and Articles 54, 56 and 64 of the Family Code of the Russian Federation, may not be considered as excluding the right of the parent who purchased, at his own expense, a flat as common shared property with an underage child to be granted property deduction from taxes according to actual expenses, but within the limits of the deduction prescribed by law.

Concluding from the above and pursuant to Article 6, Sections 1 and 2, 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 provision of Paragraph 4, Subsection 1, Section 1, Article 220 of the Tax Code of the Russian Federation as in force before it was amended by No. 112-Φ3 Federal Law of 20 August 2004 as conforming to the Constitution of the Russian Federation, because, given the systemic relation with Paragraph 1 of this Subsection, it shall be applied only in case of disposal of the possessions in common shared property as a single object of the right of property.

To recognize the provision of Paragraph 4, Subsection 1, Section 1, Article 220 of the Tax Code of the Russian Federation as amended by Federal Law No. 112-Φ3 of 20 August 2004 (now Paragraph 3) as conforming to the Constitution of the Russian Federation, because, given the systemic relation with Paragraph 1 of this Subsection, “shares” shall be understood as shares under the right of common shared property.

2. To recognize the provision of Paragraph 4, Subsection 2, Section 1, Article 220 of the Tax Code of the Russian Federation, as in force before it was amended by Federal Law No. 112-Φ3 of 20 August 2004 (now Paragraph 18) as conforming to the Constitution of the Russian Federation. This provision in their constitutional meaning and considering their interrelation with other provisions of the Code and in the system of legal regulation as a whole, implies the right of the parent who purchased, at his own expense, a flat as common shared property with an underage child to be granted property deduction from taxes according to his actual expenses, however, within the limits of deduction prescribed by law.

3. The law-enforcement decision in the case of N. V. Ivanova adopted under Paragraph 4, Subsection 2, Section 1, Article 220 of the Tax Code of the Russian Federation, as in force

before it was amended by Federal Law No. 112-Φ3 of 20 August 2004, interpreted in a manner diverging from the constitutional meaning revealed by the Constitutional Court of the Russian Federation in the present Judgment, are to be reconsidered by courts 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, it shall be directly applicable and shall not require confirmation by other authorities and state officials.

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

Constitutional Court
of the Russian Federation

No. 5-II