

IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT
OF THE RUSSIAN FEDERATION

Judgment
of 16 June 2009 No. 9-II

in the case concerning the review of the constitutionality of the provisions of Articles 24.5, 27.1, 27.3, 27.5 and 30.7 of the Administrative Offences Code of the Russian Federation, Subsection 1, Article 1070, and Paragraph 3, Article 1100 of the Civil Code of the Russian Federation and Article 60 of the Civil Procedure Code of the Russian Federation in connection with complaints of M. Yu. Karelin, V. K. Rogozhkin, and M. V. Filandrov.

Saint Petersburg, 16 June 2009

The Constitutional Court of the Russian Federation composed of President V. D. Zorkin and Judges N. S. Bondar, G. A. Gadzhiev, Yu. M. Danilov, L. M. Zharkova, G. A. Zhilin, S. M. Kazantsev, M. I. Kleandrov, S. D. Knyazev, L. O. Krasavchikova, S. P. Mavrin, N. V. Melnikov, N. V. Seleznev, A. Y. Sliva, V. G. Strekozov, O. S. Khokhryakova, V. G. Yaroslavtsev,

in the attendance of M. V. Filandrov's representative, the attorney O. P. Tseitlina; 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 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 the provisions of Articles 24.5, 27.1, 27.3, 27.5 and 30.7 of the Administrative Offences Code of the Russian Federation, Subsection 1, Article 1070, and Paragraph 3, Article 1100 of the Civil Code of the Russian Federation and Article 60 of the Civil Procedure Code of the Russian Federation.

The reason for the consideration of the case is the complaints of M. Yu. Karelin, V. K. Rogozhkin and M. V. Filandrov. The ground for the consideration of the case is the discovered uncertainty of whether the provisions challenged by the applicants are in conformity with the Constitution of the Russian Federation.

Having heard a report of Judge-Rapporteur A. Ya. Sliva, statements by the parties, the experts opinions of S. A. Belov, PhD in Law, and M. Z. Shvarts, PhD in Law, submissions of the following representatives invited to the hearing: T. A. Vasilyeva for the Prosecutor General of the Russian Federation, A. A. Smirnov for the Ministry of Justice 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. The applicants in the present case, M. Yu. Karelin, V. K. Rogozhkin and M. V. Filandrov challenge the constitutionality of the provisions of the Administrative Offences Code of the Russian Federation, the Civil Code of the Russian Federation and the Civil Procedure Code of the Russian Federation, to which the courts referred in decisions to discontinue administrative proceedings and to deny compensation for damage caused in the course of the administrative proceedings.

1.1. During 2006, two sets of administrative proceedings were initiated against M. Y. Karelin under Section 1, Article 20.1, “Disorderly Conduct”, of the Administrative Offences Code of the Russian Federation, which is punishable by an administrative fine of not less than 500 and not more than 1,000 Russian rubles or an administrative arrest for not more than 15 days. On both occasions he was administratively detained.

By the decision of the Naberezhnochelninsky Town Court of the Tatarstan Republic, which examined the cassation appeal of M. Y. Karelin and found that there was no sufficient evidence that the applicant indeed disturbed public peace, the proceedings were discontinued due to lack of *corpus delicti*. On 3 August 2007, the proceedings on the second case were discontinued due to the absence of an administrative offence event by the Supreme Court of the Tatarstan Republic, which examined the supervisory review complaint of M. Y. Karelin.

M. Yu. Karelin lodged two civil actions seeking compensation for psychological distress caused by administrative detention. On both occasions the Naberezhnochelninsky Town Court of Tatarstan denied award of damages, which decisions were upheld by the Judicial Section for Civil Cases of the Supreme Court of the Tatarstan Republic. The courts gave the following reasons for their decisions: (a) Article 1100 of the Civil Code of the Russian Federation provides an exhaustive list of grounds for statutory damages for psychological distress and it may not be interpreted broadly; (b) Decision of the Constitutional Court of the Russian Federation No. 440-O of 4 December 2003, to which the applicant refers, may not be taken into account as the constitutional interpretation of Subsection 1, Article 1070 of the Civil Code of the Russian Federation, concerns persons who were arrested or detained within criminal proceedings; (c) on

both occasions the administrative detention itself was lawful as it was conducted in compliance with the requirements of the Administrative Offences Code of the Russian Federation, namely, the time limits for administrative detention were respected and the detention was aimed at establishing the applicant's identity, preparing an administrative offence report, and securing proper consideration of the case.

M. Yu. Karelin challenges the constitutionality of Section 1, Article 27.1 of the Administrative Offences Code of the Russian Federation, which contains measures of ensuring proceedings on administrative cases, including administrative detention. He also challenges the constitutionality of Section 1, Article 27.3, and Section 3, Article 27.5 of the mentioned Code, which determine the procedure for and the time limits of administrative detention, respectively. The applicant believes that the mentioned provisions do not conform to Articles 2, 18, 22 (Section 1), 53 and 55 (Sections 2 and 3) of the Constitution of the Russian Federation, to the extent that they permit to consider administrative detention of a person lawful while the administrative proceedings were discontinued due to lack of *corpus delicti* or absence of an event of an administrative offence.

Besides, the applicant states that Subsection 1, Article 1070, and Paragraph 3, Article 1100 of the Civil Code of the Russian Federation, which prescribed specific features of compensation for damage, including compensation for psychological distress inflicted by the inquiry and investigative authorities, the prosecutor's office and courts, do not conform to Article 2, 18, 53 and 55 (Section 2) of the Constitution of the Russian Federation to the extent that they (within the meaning attributed in the judicial practice) are not applicable to recovery of damages (including psychological distress) caused by unlawful administrative detention. Article 60 of the Civil Procedure Code of the Russian Federation, which regulates admissibility of evidence, does not conform to Articles 2, 18, 53 and 55 (Sections 2 and 3) of the Constitution of the Russian Federation to the extent that within the meaning attributed in the judicial practice it does not recognize testimony of person presented in the lawsuit and (or) given at the court hearing as admissible evidence proving the nature, type and degree of the psychological distress caused by administrative detention.

1.2. In connection with the traffic accident (collision of cars), which took place on 11 July 2007, administrative proceedings were initiated, and on 3 August 2007 the decision in the administrative offence case was rendered in respect of V. K. Rogozhkin who was a driver of one of the cars in the accident. On 15 August 2007 the deputy head of the Department of Road Traffic Safety Inspectorate, Internal Affairs Department in the Oktyabrsky District of Krasnoyarsk, annulled the mentioned decision and transferred the case for fresh examination. On 6 March 2008 the head of the Department of Road Traffic Safety Inspectorate, Internal Affairs

Department in the Oktyabrsky District of Krasnoyarsk discontinued the proceedings on the case under Subsection 6, Section 1, Article 24.5 (expiration of the statute of limitations for administrative offences) and Section 5, Article 28.7 (expiration of time limits for case investigation) of the Administrative Offences Code of the Russian Federation.

The complaint of V. K. Rogozhkin, who did not consider himself guilty of the traffic accident and who objected to the discontinuation of the proceedings, was dismissed by the Oktyabrsky District Court of Krasnoyarsk. The court stated in its decision of 9 July 2008 that the expiration of the statute of limitations for administrative offences is an absolute ground, which precludes administrative proceedings.

V. K. Rogozhkin challenges the constitutionality of Subsection 6, Section 1, Article 24.5 of the Administrative Offences Code of the Russian Federation, which stipulates that the expiration of the statute of limitations for administrative offences is one of the grounds precluding administrative proceedings. In the applicant's opinion, the mentioned provision permits to discontinue the proceedings on these cases without ascertainment of all relevant circumstances, including the presence (absence) of an event and *corpus delicti*, the person's guilt. Therefore this provision does not conform to Articles 2, 45 (Section 1), 46 (Section 1) and 49 of the Constitution of the Russian Federation.

1.3. On 15 April 2007 an administrative report was filed against M. V. Filandrov under Section 1, Article 20.1, "Disorderly Conduct", of the Administrative Offences Code of the Russian Federation. The decision of the Justice of the Peace for the 208th Circuit of the Tsentralny District of Saint Petersburg to discontinue the administrative proceedings on the administrative case against M. V. Filandrov due to absence of the event of an administrative offence was annulled by the appellate decision of the Smolnensky District Court of Saint Petersburg of 7 June 2007. The case was remanded for a new trial. By the decision of the Justice of the Peace of the 207th Circuit of the Tsentralny District of Saint Petersburg of 14 June 2007, the administrative proceedings against M. V. Filandrov were again discontinued due to absence of the event of an administrative offence. This decision was annulled by the decision of the Smolnensky District Court of Saint Petersburg of 11 September 2007 and the proceeding on the case were discontinued due to expiration of the statute of limitations for administrative offences.

Subsection 3, Section 1, Article 30.7 of the Administrative Offences Code of the Russian Federation prescribes that upon a complaint against a decision on an administrative case this decision shall be annulled and the proceedings shall be discontinued if the circumstances indicated in Article 24.5 of the Code are present. In M. V. Filandrov's opinion, the mentioned provision and Subsection 6, Section 1, Article 24.5 of the Administrative Offences Code of the Russian Federation permit to discontinue the proceedings on the administrative offence due to

expiration of the statute of limitations for administrative offense even if a person charged with the offence objects to the discontinuation of the proceedings and even if all relevant circumstances of the case were not ascertained, *inter alia* the presence (absence) of the event or *corpus delicti*, and the guilt of a person in the commission of the administrative offence. Consequently, these provisions do not conform to Articles 46 (Section 2), 49, 52 and 53 of the Constitution of the Russian Federation.

1.4. According to Article 60 of the Civil Procedure Code of the Russian Federation, challenged by M. Yu. Karelin, the circumstances of the case which must be proved by certain evidence as prescribed by law, may not be proved by any other evidence. The mentioned provision referring to other legislative provisions, which stipulate imperative rules for assessment of admissibility of evidence by a court in the course of civil proceedings, may not in itself be considered as violating the constitutional rights and freedoms of the applicant.

The same conclusion must be reached in respect of Subsection 3, Section 1, Article 30.7 of the Administrative Offences Code of the Russian Federation, challenged by M. V. Filandrov, which contains a norm referring to Article 24.5 of the Code. The applicant refers to it to substantiate unconstitutionality of Subsection 6, Section 1, Article 30.7, but in itself the provision of Subsection 3, Section 1, Article 30.7 of the Administrative Offences Code of the Russian Federation may not be considered as violating his rights and freedoms in the present case.

Consequently, under Article 68 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the proceedings on the present case, to the extent concerning the constitutionality review of Subsection 3, Section 1, Article 30.7 of the Administrative Offences Code of the Russian Federation, and Article 60 of the Civil Procedure Code of the Russian Federation are to be discontinued.

Insofar as the remainder of the complaints of M. Yu. Karelin, V. K. Rogozhkin and M. V. Filandrov 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.

1.5. Therefore, pursuant to Articles 74, 96 and 97 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the subject matter for consideration by the Constitutional Court of the Russian Federation in the present case is the followings provisions:

– the interrelated provisions of Section 1, Article 27.1, Section 1, Article 27.3, and Section 3, Article 27.5 of the Administrative Offences Code of the Russian Federation, which regulate the application of administrative detention, to the extent that these provision determine

the lawfulness and reasonableness of administrative detention for up to 48 hours as a measure of ensuring proceedings on the administrative offence, provided that it is punishable by an administrative arrest. The same rules are applicable to cases where the proceedings were discontinued under Subsections 1 and 2, Section 1, Article 24.5 of the Code, due to lack of *corpus delicti* or absence of the event of an administrative offence;

– the provisions of Subsection 1, Article 1070 and Paragraph 3, Article 1100 of the Civil Code of the Russian Federation, which regulate compensation for damage, including psychological distress, caused by unlawful actions of public authorities and officials irrespective of their guilt. The mentioned provisions are the subject matter for consideration to the extent that in conjunction with the provisions of Section 1, Article 27.1, Section 1, Article 27.3 and Section 3, Article 27.5 of the Administrative Offences Code of the Russian Federation they permit courts to consider disputes on compensation to citizen for damage caused by unlawful administrative detention for up to 48 hours as a measure of ensuring proceedings on the administrative offences which are punishable by an administrative arrest as one of the forms of administrative punishment.

– Subsection 6, Section 1, Article 24.5 of the Administrative Offences Code of the Russian Federation, according to which proceedings on the administrative offence shall not be initiated and the initiated proceedings shall be discontinued due to expiration of the statute of limitations for administrative offences, to the extent that it serves a ground for discontinuation of administrative proceedings, *inter alia* where a person against whom the proceedings were initiated objects to the discontinuation.

2. The federal legislator exercises legal regulation of administrative responsibility and defines *corpus delicti* for administrative offences, types of administrative punishment and measures of ensuring proceedings on the administrative offence. Under Articles 17 (Section 3), 55 (Section 3) and 71 (Subsection “c”) of the Constitution of the Russian Federation, it shall consider it impermissible to deny or derogate from the rights and freedoms of man and citizen as they are recognized and guaranteed according to the generally recognized principles and in compliance with the Constitution of the Russian Federation. The federal legislator must respect the imperative that only such restrictions of the rights are permissible which are prescribed by the federal law and are proportionate to the constitutional aims of protecting the fundamentals of the constitutional order, morals, health, the rights and lawful interests of others, and for ensuring defence of the country and security of the state.

Recognizing the necessity of enhanced protection of citizens’ rights and freedoms in legal relations of public and administrative responsibility, the Constitutional Court of the Russian Federation has repeatedly stated that the statutory mechanisms in this domain shall conform to

the requirement of fairness, proportionality and legal security, which follows from Articles 17, 19, 46 and 55 of the Constitution of the Russian Federation and from the general legal principles. Effective protection of the rights and freedoms of an individual as the supreme value shall be guaranteed, *inter alia* by fair administration of justice (Judgments No. 14-Π of 12 May 1998, No. 5-Π of 11 May 2005 and No. 8-Π of 27 May 2008).

Pursuant to Article 18 of the Constitution of the Russian Federation, according to which the rights and freedoms of man and citizen determine the essence, meaning and implementation of laws, the activities of the legislative and executive authorities, local self-government shall be ensured by administration of justice, the mentioned criteria are directly applicable both to legislation on administrative offences, law-enforcement acts of executive authorities and their officials, and judicial decisions.

The Constitution of the Russian Federation, on the one hand, imposes an obligation on bodies of state power and local self-government, their officials, individuals and their associations to observe the Constitution of the Russian Federation and federal laws (Section 2, Article 15), and on the other hand, stipulates for the right of each citizen to state compensation for damage caused by unlawful actions (inaction) of bodies of state power and their officials (Article 53). These provisions in their systemic unity with the constitutional principles of the rule of law state and priority of human rights (Articles 1 (Section 1), 2 and 18), criteria for permissible restrictions of these rights and the guarantees of their state protection, including judicial protection (Article 17 (Section 3), 19 (Sections 1 and 2), 45, 46 and 55 (Section 2 and 3)), determine the lawfulness of the act of holding a person administratively responsible or of the act of applying coercive measures ensuring proceedings on the administrative offence. These acts are lawful only if rendered under the law and if essentially they meet the constitutional requirements of fairness, proportionality, and legal security.

Accordingly, the exercise of the right to judicial protection would be restricted if courts limited themselves in reviewing the lawfulness of actions (inaction) of state bodies or officials only to reviewing compliance with the limits of the powers prescribed by law (formally defined). A court examining the lawfulness of a decision to apply coercive measures ensuring proceedings on administrative offences may not fail to consider all circumstances of the case related to the existence or absence of the event of an administrative offence or its *corpus delicti*.

3. According to Article 22 of the Constitution of the Russian Federation, everyone shall have the right to liberty and security of the person (Section 1); arrest, detention and remand to custody shall be allowed only by a court decision; prior to a court decision a person may be detained for a period of no more than 48 hours. (Section 2). It follows from the mentioned provisions in conjunction with Articles 1, 2, 15, 17, 19, 21 and 55 of the Constitution of the

Russian Federation that the right to liberty and security of the person as one of the fundamental inalienable rights belonging to everyone from birth may be restricted only with observance of the general legal principles and under the constitutional requirements of necessity, reasonableness and proportionality in order for this right not to lose its essence.

Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms which corresponds to the mentioned constitutional provisions and which is an integral part of the Russian Federation's legal system under Articles 15 (Section 4) and 17 (Section 1) of the Constitution of the Russian Federation and has priority over national law, establishes basic guarantees of this right in a democratic society, including guarantees against unlawful detention.

According to Article 5 § 1 of the Convention, everyone has the right to liberty and security of the person; no one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: a) lawful detention of a person after conviction by a competent court; b) lawful arrest or detention of a person for non-compliance with a lawful order of a court or in order to secure fulfillment of any obligation prescribed by law; c) lawful arrest or detention of a person effected for the purpose of bringing him before a competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; d) detention of a minor by a lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before a competent legal authority; e) lawful detention of persons to prevent the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants; f) lawful arrest or detention of a person to prevent his unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

As was repeatedly stated by the European Court of Human Rights in its case law that any deprivation of liberty must not only be exercised in conformity with the substantive and procedural rules of national law, but must equally comply with the requirements of Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which in an exhaustive manner prescribes the circumstances under which a person may be deprived of liberty on lawful grounds (Judgments of 22 March 1995 in *Quinn v. France*, § 42, of 27 November 1997 in *K.-F. v. Germany*, §§ 57, 61, of 25 May 1998 in *Kurt v. Turkey*, § 122).

The concept of "deprivation of liberty" has an autonomous constitutional meaning, which implies that any legislative measures resulting in actual deprivation of liberty (e.g. a sanction for an offence or coercive measures ensuring the proceedings) shall meet the requirements of lawfulness in the context of Article 22 of the Constitution of the Russian Federation and Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

These norms are the normative basis for regulation of arrest, detention and remand in custody in prosecution of criminal and administrative offences as measures of permissible deprivation of liberty.

Despite their procedural differences, arrest, detention and remand in custody are essentially deprivation of liberty. The European Court of Human Rights interpreting provisions of the Convention stated that deprivation of physical liberty may have various forms, which are not always similar to imprisonment in its classical sense. The Court requires to assess them not by formal but by essential characteristics, such as coerced stay in a limited space, isolation from society, family, termination of execution of official duties, impossibility to move freely and to communicate with an unlimited number of persons (*Lawless v. Ireland*, Judgment of 1 July 1961, No. 3, § 14, *Guzzardi v. Italy*, Judgment of 6 November 1980, §§ 92 and 102, *Murray v. the United Kingdom*, Judgment of 28 October 1994, §§ 55 and 68, *Kemmache v. France*, Judgment of 24 November 1994, No. 3, § 42).

The European Court of Human Rights considers that Article 5 of the Convention, in proclaiming the right to liberty, contemplates the physical liberty of the person; its aim is to ensure that no one should be dispossessed of this liberty in an arbitrary fashion. In order to determine whether someone has been “deprived of his liberty” within the meaning of Article 5, the starting point must be his specific situation, and account must be taken of a whole range of criteria such as the type, duration, effects and manner of implementation of the measure in question. The difference between deprivation of and restriction upon liberty is merely one of degree or intensity, and not one of nature or substance (Judgment of 25 July 1996 in *Amuur v. France*, § 42).

Thus, the provisions of Articles 22 and 55 (Section 3) of the Constitution of the Russian Federation in conjunction with Article 5 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms in its official interpretation by the European Court of Human Rights predetermine the nature and limits of permissible restrictions of the right to liberty and security of the person, which are established by the federal legislator regulating coercive measures ensuring proceedings on administrative offences. Therefore, coercive measures ensuring proceedings on administrative offences shall not be applied in contradiction to the mentioned imperatives as they concern the restriction of the right to liberty and security of the person.

In particular, administrative detention as a coercive measure ensuring proceedings on administrative offences shall not be applied if it is not predetermined by the aims listed in Article 5 § 1 (c) of the Convention, due to which the lawful arrest or detention of a person may be effected for the purpose of bringing him before the competent legal authority on reasonable

suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so.

The concept of “detention” used in Article 5 § 1 (c) of the Convention and the concept of “lawful arrest” include the obligation of the state authorities which conduct the proceedings on administrative offences and their official to observe the norms of substantive and procedural law. In the context of imperatives of the mentioned norm, it is implied that the detained person has the right to review observance, by the state authority or its official, of legislative provisions which are necessary to recognize a coercive measure as lawful. The court shall, in its turn, review both the observance of the procedural norms which are the basis for detention and the reasonableness of this measure with reference to its aims. Moreover, the court should verify whether this measure was necessary and reasonable under the conditions, which served as a ground for its application. At the same time the official effecting of administrative detention must rely on facts which are sufficient for objectively reasonable suspicion that the specific person may have committed the offence. Detention may under no circumstances be considered lawful if the actions of the detained person could not be considered an offence at the time of commission.

The fact that the detained person was not subsequently held administratively responsible and was not brought before the court does not necessarily mean that the detention was unlawful and violated the requirements of Article 22 of the Constitution of the Russian Federation and Article 5 § 1 (c) of the Convention. The facts giving reasons for the use of detention as a coercive measure ensuring administrative proceedings may afterwards be insufficient for imposing administrative responsibility on the person. The requirements securing lawfulness of detention do not imply that the competent official at the moment of detention already has sufficient evidence for consideration of the case on the merits. The aim of detention as a precautionary measure is to ensure conditions for administrative proceedings on the respective offence, review of the facts which prove or remove certain suspicions substantiating the detention, and prepare the necessary documents for transmitting the case for examination by the court.

Administrative detention is lawful if it meets the requirements of Articles 22 and 55 (Section 3) of the Constitution of the Russian Federation in conjunction with Article 5 § 1 (c) of the Convention for the Protection of Human Rights and Fundamental Freedoms, provided that it is predetermined by the nature of the offence and is necessary for subsequent enforcement of the decision in the case concerning the administrative offence. Accordingly, the recognition of a judicial decision concerning the administrative offence as unlawful may have no effect on the review of the lawfulness of administrative detention as a preliminary measure ensuring

proceedings on the case. The arguments concerning the unlawfulness of the detention may not be recognized as sufficient if they are limited to statements that a superior instance reviewing a judicial act discovered mistakes in establishing the factual circumstances of the case or in the application of the legal norms.

4. The Administrative Offences Code of the Russian Federation, specifying the provisions of Article 22 of the Constitution of the Russian Federation in conjunction with Article 55 (Section 3), defines administrative arrest as the most severe punishment for the most serious administrative offences (in particular, disorderly conduct under Article 20.1). Administrative arrest is an isolation of a citizen from the society for not more than 15 days, and for violation of the state of emergency regime or legal regime of counterterrorism operation for not more than 30 days. Administrative arrest is imposed by a judge (Article 3.9).

An authorized official may, in exercise of his powers, use measures ensuring administrative proceedings prescribed by the Administrative Offences Code of the Russian Federation in order to prevent an administrative offence, to establish the identity of an offender, to prepare an administrative offence report, where it is not possible to do that at the place of discovery of the administrative offence, to provide for timely and proper examination of the case on the administrative offence and to enforce the decision. As measures ensuring proceedings on administrative offences implying temporary coercive restriction of liberty the Code stipulates delivery to a police station, administrative detention, and compelled attendance at a police station (Article 27.1)

Delivery to a police station and compelled attendance at a police station are a coerced transfer of a person for the purpose of preparing an administrative offence report and exercise of other procedural actions (Articles 27.2 and 27.15). Under exceptional circumstances administrative detention may be effected for not more than three hours when it is necessary for timely and proper examination of the administrative offence case and to enforce the decision (Section 1, Article 27.3, Section 1, Article 27.5). In cases concerning an administrative offence violating the regime of the state border of the Russian Federation or violation of the customs rules (Section 2, Article 27.5) and concerning certain offences mentioned in Chapter 20, “Administrative Offences Disturbing Public Order and Security” (including disorderly conduct under Article 20.1), which are punishable by administrative arrest (Section 3, Article 27.5), a person who committed an administrative offence entailing an administrative arrest as an administrative punishment may be administratively detained for not more than 48 hours (Section 3, Article 27.5). The detained persons are placed on special premises which exclude the possibility of unauthorized exit (Article 27.6).

The mentioned provisions of the Administrative Offences Code of the Russian Federation, which are in systemic interrelation, permit to administratively detain a person for not more than 48 hours and these provision entail short-term deprivation of liberty. Within the meaning of Articles 22 and 25 of (Section 3) of the Constitution of the Russian Federation and Article 5 § 1 (c) of the Convention for the Protection of Human Rights and Fundamental Freedoms, the requirements concerning the lawfulness of this measure may not be limited to observance of only formal conditions which prescribe its lawful application by officials in accordance with the goals of the legislation on administrative offences.

Administrative detention prescribed by Section 3, Article 27.5 of the Administrative Offences Code of the Russian Federation, may be considered lawful only when it is effected for the aims established by the imperatives of the Constitution of the Russian Federation and the Convention for the Protection of Human Rights and Fundamental Freedoms. It must be proportionate and necessary to achieve these aims. Consequently, administrative detention may not be recognized as lawful if it was applied by an official as prescribed by law, but in violation of the mentioned aims and criteria, in the absence of sufficient grounds, in an arbitrary manner, or as an abuse of powers.

Within the meaning of Articles 17 (Section 3), 22 and 55 (Section 3) of the Constitution of the Russian Federation and considering the legal nature of administrative detention for not more than 48 hours as a form of restriction of the constitutional right of liberty and security of the person, it may be recognized as lawful even when administrative proceedings are subsequently discontinued, *inter alia* on such grounds as the absence of an event of the administrative offence or lack of *corpus delicti* (Subsections 1 and 2, Section 1, Article 24.5 of the Administrative Offences Code of the Russian Federation). This measure is lawful if an official or state authority acted in the presence of sufficient grounds to believe that the application of this measure was necessary.

Therefore, discontinuation of administrative proceedings due to the absence of the event of the administrative offence or lack of *corpus delicti* (and on any other grounds) may not be an obstacle for appeals against unlawful application of administrative detention as a coercive measure ensuring administrative proceedings. Any other approach would violate the right to liberty and security of the person and the right to judicial protection, which are guaranteed by Articles 22 and 46 of the Constitution of the Russian Federation, respectively, and would not conform to the principles of legislation on administrative offences, in particular the principle of legality (Article 1.6 of the Administrative Offences Code of the Russian Federation).

5. The federal legislator implementing Articles 52 and 53 of the Constitution of the Russian Federation stipulated in the Administrative Offences Code of the Russian Federation a

rule, according to which the damage caused by unlawful measures ensuring administrative proceedings shall be compensated in the order prescribed by civil legislation (Section 2, Article 27.1).

According to the Civil Code of the Russian Federation, the damage caused to an individual or a legal person by unlawful actions (inaction) of bodies of state power and local self-government or their officials, including damage caused by adopting a legal act which does not conform to law or other legal acts, shall be compensated (Article 1069). As a general rule, a person who caused the damage is relieved of compensation for the damage if he proves that he is not guilty of the damage caused (Subsection 2, Article 1064).

At the same time the Civil Code of the Russian Federation in certain cases prescribes strict liability of the person. Thus, according to Subsection 1 of Article 1070 of the Code, the damage caused to a citizen by unlawful conviction, unlawful criminal prosecution, unlawful remand to custody or release on own recognizance, unlawful imposition of administrative responsibility in the form of administrative arrest, and damage caused to a legal person by unlawful administrative responsibility in the form of administrative suspension of activity shall be compensated in full from the treasury of the Russian Federation and, if prescribed by law, from the treasury of a subject of the Russian Federation or municipal treasury irrespective of the guilt of officials of inquiry authority, preliminary investigation authorities, the prosecutor's office or judicial bodies. According to Article 1100 of the Civil Code of the Russian Federation compensation for psychological distress shall be effected under strict liability rules if the harm was caused to a citizen by unlawful conviction, unlawful criminal prosecution, unlawful remand to custody or release on own recognizance, unlawful imposition of administrative responsibility in the form of administrative arrest or corrective labour (Paragraph 3).

Within the literal meaning of the mentioned provisions of Articles 1070 and 1100 of the Civil Code of the Russian Federation, the exceptional rules concerning compensation for damage caused in the course of administrative proceedings are applicable to unlawful imposition of administrative responsibility in the form of administrative arrest, i.e. compensation is awarded under strict liability rules. This approach is predetermined by the special significance of everyone's constitutional right of liberty and security of the person. Despite the fact that this right is not absolute, i.e. it may be restricted, it has exceptional significance as it creates the necessary conditions for the exercise of all other rights and freedoms.

Administrative detention for not more than 48 hours prescribed by Section 3, Article 27.5 of the Administrative Offences Code of the Russian Federation, which may be used only in cases concerning offences punishable by administrative arrest (for not more than 15 or 30 days), is not an arrest as a measure of administrative punishment, but is deprivation of liberty within the

meaning of Article 22 of the Constitution of the Russian Federation and Article 5 § 1 (c) of the Convention for the Protection of Human Rights and Fundamental Freedoms. A person who is administratively detained to ensure administrative proceedings is subjected to coerced stay in a limited space, temporary isolation from society, termination of the exercise of official duties, and impossibility to move freely and communicate with other persons.

Thus, administrative detention prescribed by Section 3, Article 27.5 of the Administrative Offences Code of the Russian Federation in the light of the nature of restrictions and consequences for the detained person is comparable to administrative arrest and detention as forms of deprivation of liberty regulated by Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms. It has no essential characteristics justifying the use of diverging compensatory mechanisms if its unlawfulness is established. The fact that administrative arrest as a measure of punishment may be imposed only in judicial proceedings affording additional possibilities for judicial review of its factual grounds and fairness of the decision in the light of constitutional principles of administration justice, also proves that it is evidently inappropriate to exclude unlawful administrative detention for not more 48 hours which does not afford these judicial guarantees from the actions of a public authority covered by the compensation for damage rules of Articles 1070 and 1100 of the Civil Code of the Russian Federation.

Within the meaning of Subsection 1, Article 1070, and Paragraph 3, Article 1100 of the Civil Code of the Russian Federation taken in conjunction with Section 3, Article 27.5 of the Administrative Offences Code of the Russian Federation and Article 5 § 1 (c), Convention for the Protection of Human Rights and Fundamental Freedoms, the absence of a direct indication of administrative detention in the text of these provisions may not imply that these provisions are not applicable to cases where the right of liberty and security of the person is restricted by administrative detention for not more than 48 hours as a measure ensuring administrative proceedings. Any other interpretation of these provisions would not conform to the Constitution of the Russian Federation and the Convention for the Protection of Human Rights and Fundamental Freedoms.

This conclusion is re-affirmed by Decision No. 440-O of 4 December 2003, in which the Constitutional Court of the Russian Federation stated that damage caused by unlawful actions (inaction) of inquiry authorities, preliminary investigation authorities and a prosecutor shall be compensated by the state in full, irrespective of the guilt of their officials; and not only in cases directly indicated in Subsection 1, Article 1070 of the Civil Code of the Russian Federation, but also when a damage is caused by unlawful application of a measure of procedural compulsion in the form of detention. This requirement relies on the opinion expressed by the Constitutional

Court of the Russian Federation in its Judgment No. 11-II of 27 July 2000. Within this legal opinion the concepts of “detained”, “accused”, “filing of charges”, “public prosecution” with regard to securing constitutional rights of citizens shall be understood in their constitutional meaning and not in the special meaning they acquire in the criminal procedure legislation. This legal opinion is equally valid to determine the constitutional meaning of administrative detention as a measure ensuring administrative proceedings where in order to secure the exercise of the constitutional rights it is necessary to give regard not only to the formal procedural, but also to the factual status of a person publicly prosecuted for an administrative offence.

Within their meaning in the system of civil and administrative regulation in force Subsection 1, Article 1070, and Paragraph 3, Article 1100 of the Civil Code of the Russian Federation may not be considered as provisions precluding compensation to the citizen of pecuniary damages and psychological distress irrespective of the guilt of officials who caused the damages if it is established that the administrative detention for up to 48 hours was unlawful (Section 3, Article 27.5 of the Administrative Offences Code of the Russian Federation).

6. As follows from Articles 1.2–1.6 of the Administrative Offences Code of the Russian Federation the primary goals of administrative proceedings are the protection of the rights and legal interests of persons and organizations which are victims of offences and protection of persons from unlawful and unreasonable charges, restriction of rights and freedoms. Administrative prosecution and imposition of fair punishment on guilty persons are coherent with the goals of administrative proceedings to an equal degree as denial of administrative prosecution of innocent persons.

Administrative offences are of lesser social danger than criminal offences, which entail criminal responsibility, and as a general rule they entail less severe administrative punishments and have less significant negative consequences for citizens. The federal legislator exercising its power to regulate administrative responsibility and administrative procedure (Subsection “k”, Section 1, Article 72 of the Constitution of the Russian Federation) may determine the limits of reasonable public prosecution in order to secure not only effective state protection, including judicial protection, of citizens’ rights, but also procedural economy, expediency of consideration of cases, and prevention of offences.

The statute of limitations for administrative offences as a ground for discontinuing administrative proceedings is prescribed by the Administrative Offences Code of the Russian Federation precisely by the considerations mentioned above (Subsection 6, Section 1, Article 24.5). At the same time, taking into account the presumption of innocence (Article 1.5 of the Administrative Offences Code of the Russian Federation) a person, in respect of whom administrative proceedings were discontinued due to expiration of the statute of limitations for

administrative offences, is considered innocent. That is, the state dismissing prosecution of a person for administrative offence does not doubt his status of an innocent person and, further, recognizes that there are no grounds to dispute his innocence.

Pursuance of public prosecution for administrative offences, which, contrary to a crime, has no significant social danger, after the expiration of the statute of limitations prescribed by law would be excessive regarding the goals of administrative offences legislation. It would not justify the efforts aimed at establishing the event of an administrative offence and its *corpus delicti* and would not promote effectiveness of public prosecution and preventive significance of administrative responsibility. By having prescribed the time limits for administrative prosecution, the state protects the person who is suspected of an administrative offence from indefinite-time risk of public prosecution, when such prosecution is inconsistent with respect of human personality and the right of security of the person.

Consequently, the provision of Subsection 6, Section 1, Article 24.5 of the Administrative Offences Code of the Russian Federation prescribes discontinuation of administrative proceedings due to the expiration of the statute of limitations for administrative offences. It does not permit the legal status of a person to be unjustifiably worsened and thus may not be considered as contradicting the aims of protection of his rights and freedoms. At the same time, a certain balance is stricken between the interests of the person who is held administratively responsible and who generally favours discontinuation of administrative proceedings and the public interests of minimizing the use of public resources when such rational organization of activities of the authorities does not lead to legally significant consequences, i.e. is adequate to socially desirable outcome and does not create a risk of impermissible restriction of the rights and freedoms (Judgments of the Constitutional Court of the Russian Federation No. 2-II of 15 January 1998 and No. 3-II of 18 February 2000).

However, denial to prosecute due to the expiration of the statute of limitations for administrative offences may not preclude the exercise of the right to compensation for damage caused by unlawful actions of officials in the course of the administrative proceedings. The discontinuation of the proceedings is neither an obstacle for determining, in other proceedings, the guilt or innocence of the person as a ground for civil responsibility, nor for establishing that unlawful administrative prosecution caused damages. The disputes concerning compensation for pecuniary damages and psychological distress caused by administrative prosecution, or on the contrary compensation of pecuniary damages and psychological distress caused by administrative offence to a victim are considered by courts in civil proceedings (Article 4.7 of the Administrative Offences Code of the Russian Federation).

The person held administratively responsible participates in these disputes not as a subject of public, but of private law and he may argue in civil proceedings both his innocence and the damage caused. Consequently, the respective claims of the person pursued judicial proceedings other than administrative may result in recognition of actions of administrative prosecution authorities as unlawful (including the use of measures ensuring administrative proceedings) and lead to the award of damages.

In any case the discontinuation of administrative proceedings due to the expiration of the statute of limitations for administrative offences shall not prevent the use of the case file materials in other proceedings. The decision to discontinue administrative proceedings shall state circumstances established in the course of consideration of the case (Subsection 4, Section 1, Article 29.10 of the Administrative Offences Code of the Russian Federation), and Section 2, Article 30.7 of the Administrative Offences Code of the Russian Federation makes this rule applicable to judicial acts on complaints against decisions in administrative offences cases. Therefore the mentioned circumstances must be also reviewed in the course of examining a complaint against a decision to discontinue administrative proceedings.

The denial of review of these circumstances on appeal against the respective decision, including the circumstances demonstrating the unreasonableness of the conclusions reached by the jurisdictional authority concerning the existence of *corpus delicti* of the administrative offence, would essentially result in denial of the right to judicial protection. This would happen notwithstanding the law-prescribed obligation of a judge or superior official to review the case as a whole during examination of the complaint against the decision in the case concerning an administrative offence; the same obligation is equally present during subsequent review of judicial acts adopted upon a complaint against the decision in the case concerning an administrative offence (Section 3, Article 30.6, and Section 3, Article 30.9 of the Administrative Offences Code of the Russian Federation).

Consequently, within its constitutional meaning in the system of legal regulation in force the provision of Subsection 6, Section 1, Article 24.5 of the Administrative Offences Code of the Russian Federation, does not imply a possibility to deny assessment of reasonableness of a jurisdictional authority's conclusions concerning the presence of *corpus delicti* in a person's actions. Any other interpretation of this provision would preclude judicial protection of the rights and freedoms of man and citizen, make illusory a mechanism of compensation for damage caused by abuse of powers, and would not conform to Articles 19, 45, 46, 53 and 53, Constitution of the Russian Federation.

Concluding from the above and pursuant to Article 6, Section 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 Section 1, Article 27.1, Section 1, Article 27.3, and Section 3, Article 27.5 of the Administrative Offences Code of the Russian Federation as conforming to the Constitution of the Russian Federation. These provisions within their constitutional meaning in the system of legal regulation in force and in conjunction with Subsection 1 and 2, Section 1, Article 24.5 of this Code imply that administrative detention for up to 48 hours may be used only if there are sufficient grounds to consider it necessary for ensuring administrative proceedings. Subsequent discontinuation of the administrative proceedings due to the absence of the event of an administrative offence or lack of *corpus delicti* may not be a ground for denial of consideration of a complaint about unlawful use of administrative detention as a coercive measure ensuring proceedings on the case.

2. To recognize Subsection 1, Article 1070, and Paragraph 3, Article 1100 of the Civil Code of the Russian Federation as conforming to the Constitution of the Russian Federation. These provisions within their constitutional meaning in the system of legal regulation in force do not exclude a possibility of compensation for damages caused by unlawful administrative detention for up to 48 hours as a measure ensuring proceedings on the administrative offence punishable by administrative arrest as one of the forms of administrative punishment, irrespective of public authorities’ and their officials’ guilt.

3. To recognize the provision of Subsection 6, Section 1, Article 24.5 of the Administrative Offences Code of the Russian Federation, according to which the proceeding on the administrative case shall be discontinued upon expiry of the statute of limitations for administrative offences, as conforming to the Constitution of the Russian Federation. The mentioned provision within their constitutional meaning in the system of legal regulation in force does not imply a possibility to deny assessment of reasonableness of jurisdictional authority’s conclusions concerning the presence of *corpus delicti* in a person’s actions.

4. Pursuant to Article 125 of the Constitution of the Russian Federation and Articles 6, 74, 86, 96 and 97 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the constitutional meaning of Subsections 1, 2 and 6, Section 1, Article 24.5, Section 1, Article 27.1, Section 1, Article 27.3 and Section 3, Article 27.5 of the Administrative Offences Code of the Russian Federation, and of Subsection 1, Article 1070, and Paragraph 3,

Article 1100 of the Civil Code of the Russian Federation, revealed in the present Judgment, is generally binding and precludes any other interpretation in the law-enforcement practice.

5. To discontinue the proceedings in the present case to the extent that they concern the constitutional review of Article 60 of the Civil Procedure Code of the Russian Federation and Subsection 3, Section 1, Article 30.7 of the Administrative Offences Code of the Russian Federation.

6. The law-enforcement decisions rendered in the cases of M. Y. Karelin, V. K. Rogozhkin and M. V. Filandrov are to be reconsidered according to the established procedure if they were based on the provisions of Subsections 1, 2 and 6, Section 1, Article 24.5, Section 1, Article 27.1, Section 1, Article 27.3 and Section 3, Article 27.5 of the Administrative Offences Code of the Russian Federation, and of Subsection 1, Article 1070, and Paragraph 3, Article 1100 of the Civil Code of the Russian Federation in an interpretation diverging from their constitutional meaning revealed in the present Judgment.

7. Pursuant to Sections 1 and 2, Article 79 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, this Judgment shall be final and shall not be subject to any appeal, it shall come into force immediately upon pronouncement, shall be directly applicable, and shall not require confirmation by other authorities or state officials.

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

Constitutional Court
of the Russian Federation

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