

IN THE NAME OF THE RUSSIAN FEDERATION

Constitutional Court of the Russian Federation

Judgment

of 2 March 2010 No. 5-II

In the case concerning the review of constitutionality of the provisions of Article 242.1 of the Budget Code of the Russian Federation in connection with the complaint of the Commissioner for Human Rights in the Russian Federation

The Constitutional Court of the Russian Federation composed of the President V.D.Zor'kin, , 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.Mel'nikov, Yu.D.Rudkin, N.V.Seleznev, A.Ya.Sliva, V.G.Strekozov, V.G.Yaroslavtsev,

in the attendance of the representative of the Commissioner for Human Rights in the Russian Federation, PhD in Law N.V.Vasilyev, Permanent Representative of the State Duma to the Constitutional Court of the Russian Federation A.N.Kharitonov, Representative of the Council of Federation, PhD in Law Ye.V.Vinogradova, Plenipotentiary Representative of the President of the Russian Federation to the Constitutional Court of the Russian Federation M.V.Krotov,

pursuant to Article 125 (Section 4) of the Constitution of the Russian Federation, Paragraph 3 of Section 1, Sections 3 and 4 of Article 3, Section 1 of Article 21, 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 constitutionality of the provisions of Article 242.1 of the Budget Code of the Russian Federation.

The reason for the consideration of the case was the complaint of the Commissioner for Human Rights in the Russian Federation. The ground for the consideration of the case was the discovered uncertainty of whether the provisions

contested by the applicant are in conformity with the Constitution of the Russian Federation.

Having heard the report of Judge-Rapporteur S.M.Kazantsev, statements by the parties' representatives, interventions by the participants invited to the hearing: Ye.A.Borisenko for the Ministry of Justice of the Russian Federation, N.B.Petlina for the Ministry of Finance of the Russian Federation, T.A.Vasilyeva for the Prosecutor General of the Russian Federation, I.V.Selionov for the Federal Service of Bailiffs, having considered written submissions and other materials,

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

1. In accordance with Article 242.1 of the Budget Code of the Russian Federation execution of judicial acts on turning of exaction on the funds of budgets of the budgetary system of the Russian Federation is carried out on the basis of executive documents – writ or court order with indication of sums which ought to be exacted (Paragraph 1); to the executive document (with the exception of court order), sent for execution by court on request of exactor or by exactor himself, a properly certified copy of the court act on the basis of which it was issued must be attached (Paragraph 2); non-submission of any document indicated in Paragraph 2 of this Article constitutes a basis for return of the documents, entered for execution, to the exactor.

1.1. The constitutionality of the said provisions is contested by the Commissioner for Human Rights in the Russian Federation, having addressed to the Constitutional Court of the Russian Federation in defence of the constitutional rights of G.M.Demidkina – a widow of I.G.Demidkin, in whose respect accusatory sentence was rendered on 5 June 1981, abrogated with sending the criminal case for additional investigation by resolution of the Presidium of Voronezh Regional Court of 12 December 1990. On 8 July 1991 I.G.Demidkin died, and on 4 September 1992 the criminal case was discontinued in connection with absence of *corpus delicti* in the actions of the accused.

G.M.Demidkina's demands of compensation of property damage caused by the unlawful institution of criminal proceedings against her husband were partly

satisfied by the resolution of the Prosecutor of the Voronezh Region of 9 October 1992: lost income for the time of serving the sentence and expenditures for juridical services were compensated. The demand of return of cash funds unlawfully withdrawn in the course of investigation was later also satisfied (resolution of the Deputy Prosecutor of the Voronezh Region of 14 April 2005), and the sum of money subject to payment was re-counted according to the inflation rate (resolution of the First Deputy Prosecutor of the Voronezh Region of 6 July 2006). The resolution on issue of the writ on exaction of this sum of money at the expense of the Russian Federation's Treasury was adopted by Leninsky District Court of the City of Voronezh on 4 August 2006.

On 22 May 2007 the documents sent by G.M.Demidkina to the Ministry of Finance of the Russian Federation for execution were returned with indication of the necessity to submit a court act on the basis of which the writ was issued. At the same time the Administration of the Federal Treasury for the Voronezh Region appealed to the Voronezh Regional Court with supervisory complaint. By the resolution of the Presidium of the Voronezh Regional Court of 27 June 2007 the supervisory complaint was satisfied, the resolution of Leninsky District Court of the City of Voronezh of 4 August 2006 was abrogated and the proceedings on the G.M.Demidkina's application for issue of the writ was discontinued. Leninsky District Court of the City of Voronezh, refusing by the judgment of 24 February 2009 to satisfy the suit of G.M.Demidkina to the Ministry of Finance of the Russian Federation, the Administration of the Federal Treasury for the Voronezh Region and the Prosecutor's Office of the Voronezh Region on compensation of property damage caused by unlawful criminal prosecution and of expenditures on payment for representative's services, proceeded from the fact that the Administration of the Federal Treasury for the Voronezh Region and the Prosecutor's Office of the Voronezh Region are inappropriate defendants in this civil case and the demand to oblige the Ministry of Finance of the Russian Federation to pay respective amounts as a compensation of damage was not appropriately applied.

1.2. The Commissioner for Human Rights in the Russian Federation regards Article 242.1 of the Budget Code of the Russian Federation as unconstitutional because it does not allow to turn exaction on the funds of budgets of the budgetary system of the Russian Federation on the basis of procedural decisions of an inquirer or investigator adopted in the framework of the pre-trial proceedings (and in accordance with previous criminal procedure legislation – a prosecutor too), by which the right of a person to rehabilitation is recognized and the amount of damage compensation, caused by unlawful institution of criminal proceedings, is determined.

In the applicant's opinion, the contested regulation in fact excludes for persons rehabilitated at the pre-trial stage of the criminal proceedings the possibility to realize their constitutional right to the state compensation of damage caused by unlawful actions (inaction) of bodies of State power or their officials, because the criminal procedure legislation does not provide for obligation of a court to consider a demand of a rehabilitated exactor and, consequently, does not give him possibility to receive a court act meeting the requirements of Article 242.1 of the Budget Code of the Russian Federation, which violates his rights guaranteed by Articles 19 (Section 1), 52 and 53 of the Constitution of the Russian Federation.

1.3. Pursuant to Articles 74, 96 and 97 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the Constitutional Court of the Russian Federation shall pass the decision in the case on the review of constitutionality of a law or certain of its provisions in connection with a citizen's complaint solely on the subject stated in the complaint and only in relation to those legal provisions contested by the applicant, which were applied or ought to be applied in his case and infringe on the constitutional rights and freedoms; for all that the Constitutional Court of the Russian Federation assesses both the literal meaning of legal provisions under consideration and the meaning attributed to them by an official and other interpretation or the prevailing law-applying practices, as well as proceeding from their place in the system of legal acts.

Therefore, the subject-matter for consideration by the Constitutional Court of the Russian Federation in the present case are the provisions of Article 242.1 of the Budget Code of the Russian Federation determining general rules of execution of court acts on turning the exaction on funds of budgets of the budgetary system of the Russian Federation as applied to the cases of State compensation of property damage caused to the rehabilitated person, in respect of whom the criminal persecution has been discontinued at the stage of pre-trial proceedings.

2. The Constitution of the Russian Federation secures the right of everyone to the State compensation of damage cause by unlawful actions (or inaction) of bodies of State power or their officials (Article 53), the realization of which is guaranteed by the constitutional obligation of the State – in cases of violation of the rights protected by law by bodies of public authority and their officials – to provide to the victims access to court and compensation of damage (Article 52) as well as State, including judicial, protection of rights and freedoms of man and citizen (Article 45, Section1; Article 46).

Pursuant to Articles 17 (Sections 1 and 2) and 18 of the Constitution of the Russian Federation, the right to court protection among other fundamental human rights and freedoms is recognized and guaranteed according to the universally recognized principles and norms of international law and in accordance with the Constitution of the Russian Federation, has direct force, determines the meaning, content and implementation of laws, the functioning of the legislative and executive authority which, as the Constitutional Court of the Russian Federation has repeatedly indicated, contemplates not only the right to appeal to court, but also guarantees allowing to realize it in full capacity and securing effective restoration of rights through judicial proceeding meeting the requirements of justice and equality (Judgments of 14 July 2005 No. 8-II, of 26 December 2005 No. 14-II, of 25 March No. 6-II and others).

Corresponding to the Constitutional guarantees of the right to compensation of damage, staying under court protection, including the damage caused by unfounded criminal persecution, are the provisions of the Convention for the

Protection of Human Rights and Fundamental Freedoms (Paragraph 5 of Article 5, Article 3 of Protocol No. 7) and of the International Covenant on Civil and Political Rights (Sub-Paragraph “a” of Paragraph 3 of Article 2, Paragraph 5 of Article 9, Paragraph 6 of Article 14), establishing for every person having become victim of unlawful arrest, placement in custody or judicial error the right for compensation and obligation of the State to provide effective means of legal protection of violated rights.

It follows from the adduced provisions of the Constitution of the Russian Federation and acts of international law based on the principles of law-governed State, supremacy of law, juridical equality and justice that the State, providing the persons having suffered from unlawful and (or) unfounded institution of criminal procedure against them at any stage of criminal proceedings, effective restoration of rights is obliged to guarantee to them compensation of the caused damage, including through compensation from the funds of the State budget.

Rendering concrete the constitutional law principle of responsibility of the State for unlawful actions (or inaction) of bodies of state power or their officials, the federal legislator sets up the procedure and conditions of compensation of damage caused by such actions (inaction). For all that, proceeding from the necessity of maximum possible compensation of damage, he must take into account peculiarities of the regulated public relations (Judgment of the Constitutional Court of the Russian Federation of 27 January 1993 No. 1- II) and – proceeding from the specific legal status of persons affected by damage in course of criminal persecution – provide, alongside with general civil law rules of compensation of damages, for special public-law mechanisms, simplifying the procedure of restoration of rights of rehabilitated persons; the fact is that a citizen, having undergone unfounded criminal persecution on behalf of the State needs particular guarantees of protection of his rights. Especially as, while considering the question of compensation of damage cause by erroneous institution of criminal proceedings, the requirements of the presumption of innocence provided for in Article 49 of the Constitution of the Russian Federation are taking effect.

Proceeding from their essence, the obligation to prove the grounds for compensation of this damage, directly linked with proving of innocence in commitment of a crime, may not be placed on the citizen.

The European Court of Human Rights adheres to analogous position, proceeding in his practice from the belief that Paragraph 2 of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, fixing the principle of the presumption of innocence, extends on the judicial proceedings related to compensation of damage if receipt of the compensation is conditioned by the unlawfulness itself of instituting of criminal procedure or placement to custody, which is confirmed by the decision of acquittal in force; this provision is based on general rule according to which after the acquittal has entered into force even suspicions affecting innocence of the accused are inadmissible (Judgments of 21 March 2000 in the case “Rushiti vs. Austria”, of 11 February 2003 in the case “Hammern vs. Norway” and of 29 June 2006 in the case “Panteleyenکو vs. Ukraine”).

Thus, stipulating for special mechanisms of restoration of violated rights for realization of a public-law aim – rehabilitation of everyone who has unlawfully and (or) unfoundedly undergone criminal persecution, the federal legislator must not place on a citizen, as the weaker side in this relation, excessive encumbrances connected with arbitrary decisions and actions of bodies of executive power, but, on the contrary, has to create procedural conditions for the soonest possible determination of the amount of the damage caused and its compensation, in any event not calling in question the principle of executability of adopted decisions about payments of compensation of damage to rehabilitated persons.

3. Article 242.1 of the Budget Code of the Russian Federation contains general injunctions concerning execution of court acts, securing, including in accordance with Articles 1069 and 1070 of the Civil Code of the Russian Federation, compensation, at the expense of the Treasury of the Russian Federation, of damage caused to the citizen by unlawful actions of State bodies by

way of turning of the exaction on the funds of budgets of the budgetary system of the Russian Federation.

These injunctions are applied in course of execution of the court decisions adopted both in civil and in criminal procedures, including cases, when the damage has been caused by actions (or inaction) of the State bodies and their officials, manifesting themselves in unlawful institution of criminal proceedings, if later the criminal persecution was discontinued by resolutions of an inquirer, investigator on grounds giving the right for rehabilitation. With all that, both according to the literal meaning of Article 242.1 of the Budget Code of the Russian Federation and the meaning attributed to it by the judicial practice, the obligation of the authorized financial body to make payment from a corresponding budget amounts for compensation of the caused damage arises only on condition that it is confirmed by an act adopted by court and not by a body of criminal persecution.

This requirement expresses a principle of budget immunity established by Article 239 of the Budget Code of the Russian Federation: proceeding from the legal nature of budget, which is a financial basis of functioning of the State whose resources are spent on State and public needs in the interests of all citizens residing on its territory, and the need to of purposeful spending of budgetary funds, the federal legislator is entitled and obliged to establish legal regulation that would hinder the possibility of uncontrollable turning of exaction on the funds of the budget. This secures real guarantees of preservation of the resources of the State which can resort for this purpose to the use of judicial protection of its rights.

For all that, normative provisions of Article 242.1 of the Budget Code of the Russian Federation, proceeding from its place in the system of the legal regulation in force, do not restrict and cannot restrict the right to compensation of the damage caused by the unlawful criminal persecution neither in its amount, nor with respect to the procedure of compensation, because they create conditions not only for the protection of financial interests of the society and the State, but also for court protection of citizens' right to compensation of damage caused by unlawful actions (or inaction) of bodies of State power or their officials. Judicial mechanism of

resolution of property disputes connected, *inter alia*, with compensation of the caused damage at the expense of the budget, is the most preferable for securing of justice and proportionality of a decision, as well as for appropriate control over observance of these general legal requirements in course of adoption of pre-trial acts, and therefore, as directed both at securing of the rights of a person and at consideration of lawful interest of the State as the owner of resources, to the greatest extent conforms to the provisions of Articles 8 (Section 2), 35 (Section 3) and 46 of the Constitution of the Russian Federation.

Hence, formulation of a question of constitutionality of Article 242.1 of the Budget Code of the Russian Federation is connected not with uncertainty of its normative content and significance in the system of legal regulation (criminal-procedural, civil-law, civil-procedural), proceeding from which the law-enforcement must only be carried out in order not to lose the real constitutional law content of this norm, but with understanding in the law-applying practices of its place in the legal regulation of the institute of State compensation of property damage caused to the rehabilitated person in the case when his criminal persecution was discontinued at the stage of pre-trial proceedings.

4. The Criminal Procedure Code of the Russian Federation, basing itself on the necessity to rehabilitate everyone unlawfully affected by criminal persecution, defines rehabilitation as the procedure of restoration of rights and freedoms and compensation of damage caused in connection with unlawful or unfounded criminal persecution and recognizes rehabilitated person's unconditional right to its compensation (Paragraphs 34 and 35 of Article 5, Article 6).

In accordance with Article 133 of the Criminal Procedure Code of the Russian Federation, right to rehabilitation includes the right to compensation of property damage, elimination of consequences of moral damage and restoration of labour, pension, housing and other rights; the damage caused to a citizen as a result of criminal persecution is compensated by the State in full volume regardless of the guilt of a body of inquiry, inquirer, investigator, prosecutor and court (Section 1); the right to rehabilitation, including the right to compensation of damage

connected with criminal persecution, belongs to: defendant, in whose respect a verdict of “not guilty” has been passed; defendant, the criminal persecution in whose respect has been discontinued in connection with rejection of indictment by the public prosecutor; suspect or accused, criminal persecution in whose respect has been discontinued on the grounds envisaged by Paragraphs 1, 2, 5 and 6 of Section 1 of Article 24 and Paragraphs 1 and 4-6 of Section 1 of Article 27 of the present Code; convict, in cases of complete or partial abrogation of accusatory sentence of a court having entered in legal force and discontinuation of the criminal case on the grounds envisaged by Paragraphs 1 and 2 of Section 1 of Article 27 of the present Code; a person to whom compulsory measures of medical character have been applied, in the case of abrogation of unlawful or unfounded resolution of a court on application of such measures (Section 2); the right to compensation of damage according to the procedure provided for by Chapter 18 of the present Code belongs also to any person, unlawfully subjected to measures of procedural constraint in the course of criminal proceedings (Section 3); in other cases, except for those envisaged by the present Code, the questions related to compensation of damage shall be resolved in accordance with civil judicial proceedings (Section 5).

The order of compensation of damage fixed in the criminal procedure contemplates that the court in a sentence, ruling, resolution, and the investigator, inquirer in a resolution recognize the right to rehabilitation of an acquitted or a person, in respect of whom criminal persecution has been discontinued; simultaneously a notice containing explanation of the procedure of compensation of damage, connected with criminal persecution is sent to the rehabilitated (Section 1 of Article 134 of the Criminal Procedure Code of the Russian Federation). In the course of the period of limitation, envisaged by the Civil Code of the Russian Federation, as from the day of receipt of the notice the rehabilitated has the right to turn with a demand of compensation of property damage to the body having passed a sentence and (or) having issued a ruling, resolution on discontinuation of criminal case, on abrogation or alteration of unlawful or unfounded decisions; this

body, within a period no longer than one month from receipt of the demand of compensation of property damage, determines its amount and issues a resolution on carrying out payments in compensation of this damage (Sections 2 and 4 of Article 135 of the Criminal Procedure Code of the Russian Federation). The resolutions of a judge, investigator, inquirer on carrying out of payments, return of property may be appealed in criminal procedure (Article 137 of the Criminal Procedure Code of the Russian Federation).

According to Section 5 of Article 135 of the Criminal Procedure Code of the Russian Federation, the demand of compensation of property damage shall be resolved by a judge in the procedure established by Article 399 of this Code for resolution of questions connected with execution of a sentence. In the sense of this legal provision in interconnection with Article 133, Section 1 of Article 134, Sections 2 and 4 of Article 135, Paragraph 1 of Article 397 and Section 1 of Article 399 of the Criminal Procedure Code of the Russian Federation, the question of carrying out payments in compensation of damage and determination of their amount in procedures, established for the stage of execution of a sentence, shall be resolved directly by court in cases when the right to rehabilitation has earlier been recognized in the “not guilty” verdict or ruling, resolution of a higher judicial instance on discontinuation of a criminal case; in cases when the right to rehabilitation has been recognized by an investigator or inquirer, this question shall be resolved by the body of preliminary investigation having discontinued criminal case.

With all that, investigator, inquirer, in order to realize the principle of maximum possible compensation of damage following from the Constitution of the Russian Federation, are guided both by the provisions of Section 1 of Article 135 of the Criminal Procedure Code of the Russian Federation, contemplating the kinds of payments and of property subject to return, and other provisions of the legislation fixing general rules of determination of the amount of compensation of damage. And the suits for compensation of moral damage (in terms of money) are brought in the civil procedure, in the same procedure decisions on restoration of

labour, pension, housing and other rights of a rehabilitated are appealed (Section 2 of Article 136 and Section 1 of Article 138 of the Criminal Procedure Code of the Russian Federation).

Thus, the actual criminal procedural order of recognition of the right to compensation of property damage in connection with rehabilitation, including at the stage of pre-trial proceedings in criminal case, in accordance with Articles 45, 49, 52 and 53 in all cases creates for rehabilitated persons a simplified, in comparison with the suit procedure in civil proceedings, regime of legal protection, which frees them from the burden of proof of the grounds and amount of compensation of damage and simultaneously gives them a possibility to participate in proving of the amount of compensation, as well as possibility to appeal of decisions adopted on this matter in case of disagreement with them.

As the Constitutional Court of the Russian Federation has repeatedly stressed, neither the constitutional right to court protection, nor the principles of adversarial nature of proceedings and equality of parties and general legal principle of equality do not contemplate a citizen's choice, at his own discretion, of any means and procedures of court protection (Judgments of 28 January 1997 No. 2-II, of 16 July 2004 No. 15-II and others); and the legislator is entitled both to establish procedures in the framework of which compensation of damage to rehabilitated persons is carried out and to further improve them if these procedures are not clear enough or contain lacunae (Judgments of 2 February 1996 No. 1-II, of 17 July 2002 No. 13-II, of 20 February No. 1-II and others).

The Criminal Procedure Code of the Russian Federation, not contemplating directly how a rehabilitated person, criminal persecution against whom has been discontinued by a body of preliminary investigation at the pre-trial stage, can receive the court decision confirming his right to compensation of property damage caused by criminal persecution, at the same time does not exclude such a possibility.

In connection with supplement of the Budget Code of the Russian Federation by the Federal Law of 27 December 2005 No. 197-Φ3 with Chapter 24.1

“Execution of Court Acts on Turning of Exaction on Funds of Budgets of the Budgetary System of the Russian Federation”, in accordance with Article 242.1 of which turning of exaction on funds of budgets of the budgetary system of the Russian Federation is carried out only according to court act, necessary amendments were made to the Civil Procedure Code of the Russian Federation, Arbitration Procedure Code of the Russian Federation and the Federal Law “On Executive Proceedings”, aimed at bringing these normative acts in accordance with the provisions of Article 242.1 of the Budget Code of the Russian Federation.

When making the indicated amendments to the Budget Code of the Russian Federation, the federal legislator was obliged to take into account that corresponding provisions of the criminal procedure legislation must not create obstacles for turning of exaction on budget funds with the aim of compensation to the citizens of property damage caused by unlawful and (or) unfounded criminal persecution. This approach, following from Article 53 of the Constitution of the Russian Federation in interconnection with its Articles 15 (Section 2), 17 (Section 2), 18, 45, 46 and 52, contemplated amendments also to the Criminal Procedure Code of the Russian Federation conditioned by changes un the budgetary legislation which, however, in deviation from the rules of legislative technique, was not carried out.

As a result, in the actual legal regulation of the institute of rehabilitation of persons unlawfully subjected to criminal persecution a formal non-coordination arose between interconnected provisions of Sections 2 and 4 of Article 135 of the Criminal Procedure Code of the Russian Federation on issue by investigator, inquirer of a resolution, not requiring confirmation in court procedure, on payments in compensation of property damage to persons rehabilitated at the pre-trial stage of proceedings in a criminal case, on the one hand, and the provisions of Articles 242.1 and 239 of the Budget Code of the Russian Federation, allowing exaction from the funds of budgets of the budgetary system of the Russian Federation only according to court act, on the other.

This non-coordination, engendering in practice contradictory law-applying, needs to be legislatively eliminated; in this connection the federal legislator, taking into account both heightened level of guarantees of the State protection of rehabilitated persons and immunity of budgets of the budgetary system of the Russian Federation declared by him, must establish non-contradictory, adequate legal mechanism of compensation of property damage, caused by unlawful criminal persecution, at the stage of pre-trial proceedings in a criminal case, which would secure for rehabilitated persons effective restoration of rights through the judiciary meeting the general legal principles of justice and equality.

At the same time, the absence of such legislative mechanism may not stop realization of the constitutional right of citizens to State compensation of damage, caused by unlawful actions (or inaction) of the bodies of State power or their officials, guaranteed by the Constitution of the Russian Federation, including at the stage of pre-trial proceedings in a criminal case. As the Constitutional Court of the Russian Federation pointed out, a lacuna in the legislative regulation staying as a result of inaction of the legislative bodies of State power for a long time, enough for its elimination, may not serve as insuperable obstacle for realization of the rights and lawful interests of citizens following from the Constitution of the Russian Federation. In cases when collision of legal norms leads to the collision of constitutional rights realized on their base, the question of elimination of this contradiction acquires constitutional aspect and, consequently, falls within the competence of the Constitutional Court of the Russian Federation, which in these cases provides for revelation of the constitutional meaning of the law in force (Judgments of the Constitutional Court of the Russian Federation of 23 December 1997 No. 21-II, of 2 February 1999 No. 3-II and of 23 February 1999 No. 4-II).

6. The non-coordination which arose between the provisions of Article 242.1 of the Budget Code of the Russian Federation and other branch regulation of the institute of rehabilitation, which hinders effective realization of the right to compensation of damage caused by unlawful and (or) unfounded criminal persecution, does not lead to recognition of this Article as non conforming to the

Constitution of the Russian Federation, because its provisions as such do not limit the right to compensation of the indicated damage.

Proceeding from this, Article 242.1 of the Budget Code of the Russian Federation – as regards its constitutional law meaning and in the inter-connection with provisions of Sections 2, 4 and 5 of Article 135 of the Criminal Procedure Code of the Russian Federation – contemplates that the right of exactor of funds of the budget to appeal to court with a demand of adoption of a court act on compensation of damage caused by unlawful criminal persecution corresponds to his obligation to attach to the executive act a copy of the court act, on the basis of which it was issued. Accordingly, the provision of Section 5 of Article 135 of the Criminal Procedure Code of the Russian Federation that the demand of compensation of property damage shall be resolved by a judge in procedure established by Article 399 of this Code for resolution of questions connected with execution of sentence, in inter-connection with provisions of Article 133, Sections 2 and 4 of Article 135, Articles 137 and 138 of the Criminal Procedure Code of the Russian Federation, means that this procedure shall be applied to compensation of property damage not only to persons who's right to rehabilitation has been recognized by a "not guilty" verdict or ruling, resolution of a higher judicial instance on discontinuation of a criminal case, but also to persons having been rehabilitated at the stage of pre-trial proceedings in a criminal case, which is in accordance with Paragraph 1 of Article 397 of the Criminal Procedure Code of the Russian Federation, pursuant to which the questions connected with compensation of damage to a rehabilitated, restoration of his labour, pension, housing and other rights, shall be considered by a court in a procedure established for execution of a sentence.

Pursuant to the principle of equality before the law and the court (Article 19, Section 1 of the Constitution of the Russian Federation), at the stage of pre-trial proceedings in a criminal case procedural guarantees of the right to access to court in the procedure of Article 399 of the Criminal Procedure Code of the Russian Federation are guaranteed to the rehabilitated, analogous to the guarantees granted

to persons in respect of whom criminal persecution was discontinued by a court, including the right to receipt of the court decision on payments in compensation of damage cause by unlawful criminal persecution. This – judicial – procedure is, *inter alia*, additional guarantee against arbitrary determination of the amount of compensation of damage by bodies of preliminary investigation and allows both to rehabilitated and organs representing the Treasury of the Russian Federation to dispute their point of view on this issue.

Other interpretation of the provisions of Article 242.1 of the Budget Code of the Russian Federation, as excluding for rehabilitated on resolution of investigator, inquirer the possibility apply for court decision on payments in compensation of property damage in the framework of procedures envisaged by the criminal procedure law (Article 133, Sections 2, 4 and 5 of Article 135, Articles 397 and 399 of the Criminal Procedure Code of the Russian Federation), would not secure for persons rehabilitated at different stages of the criminal procedure juridical equality in realization through criminal procedure of the constitutional right to State compensation of damage caused by unlawful actions (or inaction) of bodies of State power or their officials and would lead to violation of Articles 19 (Sections 1 and 2), 52 and 53 of the Constitution of the Russian Federation.

Concluding from the above and pursuant to Article 6, Sections 1 and 2 of Article 71, Articles 72, 74, 75, 79 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 provisions of Article 242.1 of the Budget Code of the Russian Federation determining general procedure of turning of exaction to the funds of budgets of the budgetary system of the Russian Federation as applied to the cases of compensation by the State of property damage cause to a rehabilitated person, criminal persecution of whom was discontinued at the stage of pre-trial proceedings, not contradictory to the Constitution of the Russian Federation, since these provisions within their constitutional law meaning in the system of actual

legal regulation contemplate that the obligation of exactor to attach to the executive document a copy of a court act, on the basis of which it was issued, corresponds to the right to receive such an act in the procedure established by the Criminal Procedure Code of the Russian Federation on the ground of a resolution of an investigator, inquirer on discontinuation of criminal persecution, rehabilitation and payments in compensation of damage cause by unlawful and (or) unfounded criminal persecution.

The constitutional law meaning of normative regulation of the institute of compensation of property damage caused to rehabilitated person by unlawful and (or) unfounded criminal persecution, including the provisions of Article 242.1 of the Budget Code of the Russian Federation, revealed in the present Judgment, shall be generally binding and shall preclude any other interpretation in the law-applying practice.

2. The case of G.M.Demidkina is to be reconsidered according to the established procedure with regard to the present Judgment.

3. The present Judgment shall be final, not subject to any appeal, it shall come into force immediately upon pronouncement, it shall be directly applicable and shall not require confirmation by other bodies and officials.

4. Pursuant to Article 78 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the present 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.

The Constitutional Court
of the Russian Federation.