IN THE NAME OF THE RUSSIAN FEDERATION

Constitutional Court of the Russian Federation

Judgment

of 25 April 2011 No. 6-П

In the case concerning the review of constitutionality of the provisions of Section 1 of Article 3.7 and Section 2 of Article 8.28 of the Administrative Offences Code of the Russian Federation in connection with the complaint of the Limited Liability Company "StroyKomplect"

The Constitutional Court of the Russian Federation composed of the President V.D.Zor'kin, Judges K.V.Aranovsky, A.I.Boitsov, N.S.Bondar', G.A.Gadzhiev, Yu.M.Danilov, L.M.Zharkova, G.A.Zhilin, S.M.Kazantsev, M.I.Kleandrov, S.D.Knyazev, A.N.Kokotov, L.O.Krasavchikova, S.P.Mavrin, N.V.Mel'nikov, Yu.D.Rudkin, N.V.Seleznev, O.S.Khokhryakova,

in the attendance of the representative of the Limited Liability Company "StroyKomplect", lawyer Ye.Yu.Sokova, 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 provision of Section 1 of Article 3.7 and Section 2 of Article 8.28 of the Administrative Offences Code of the Russian Federation.

The reason for the consideration of the case was the complaint of the Limited Liability Company "StroyKomplect". 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 Yu.D.Rudkin, statements by the parties' representatives, interventions by the participant invited to the hearing T.A.Vasilyeva for the Prosecutor General of the Russian Federation, 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. According to the Administrative Offences Code of the Russian Federation confiscation of an instrument of commission or an object of an administrative offence is compulsory uncompensated conversion into federal property or in the property of a subject of the Russian Federation of things not withdrawn from circulation; confiscation shall be prescribed by a judge (Section 1 of Article 3.7); illegal felling, damage of forest planting, committed with the use of mechanisms, means of auto- and moto-transport, self-propelled machines and other kinds of technical equipment, if this activity does not contain criminally punishable action, entail imposition of administrative fine on citizens (officials, legal persons) in respective amount with confiscation of instruments of commission of the administrative offence and products of illegal use of nature (Section 2 of Article 8.28).

1.1. G.A.Dvoryashin and D.V.Strogonov were recognized guilty of commission of an administrative offence by resolutions of Justice of the Peace of the judicial district No. 2 of the City of Kotlas of Arkhangel'sk Region of 14 September 2009 and of 15 September 2009, and each was exposed to administrative penalty in the form of administrative fine in the amount of 3500 rubles with confiscation of the instrument of commission of this administrative offence – multi-functional timber cutting machine (harvester "John Deere 1270D"), the owner of which is Limited Liability Company "StroyKomplect".

Supervisory complaint of G.A.Dvoryashin, in which he objected against imposition of penalty, including in the part of confiscation of timber cutting

machine which was given to him by the employer who possessed it, in his turn, on the right of lease, was rejected by Arkhangelsk Regional Court which indicated in the resolution of 28 January 2010 that by virtue of Article 3.7 of the Administrative Offences Code of the Russian Federation confiscation of the instrument of commission of an administrative offence is carried out irrespective of whether the person having committed an administrative offence owns it or has it on other lawful grounds.

On 3 November 2009 the bailiff-executor of the Division of Bailiffs of the City of Kotlas and Kotlas District of the Directorate of the Federal Service of Bailiffs for Arkhangel'sk Region passed a resolution on institution of executive proceedings in respect of debtors G.A.Dvoryashin and D.V.Strogonov, in which as a matter for execution confiscation of the timber cutting machine-harvester "John Deere 1270D" was indicated.

1.2. As it follows from Articles 36, 74, 96 and 97 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", rendering concrete Article 125 (Section 4) of the Constitution of the Russian Federation, the Constitutional Court of the Russian Federation admits for consideration complaints of citizens, as well as associations of citizens on violation of their constitutional rights and freedoms by a law, if it comes to the conclusion that contested legal provisions were applied in a specific case, the consideration of which has been completed in court, and infringe on the constitutional rights and freedoms and that there exists uncertainty of whether these legal provisions conform to the Constitution of the Russian Federation; passing the judgment solely on the subject stated in the complaint and only in relation to that part of the act, the constitutionality of which is called in question, 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 proceeds from their place in the system of legal acts.

In the present case the norms of the Administrative Offences Code of the Russian Federation applied by courts in cases of G.A.Dvoryashin and D.V.Strogonov and contested in the constitutional proceedings by the Limited Liability Company “StroyKomplect” infringe on the rights of the applicant as the owner of the timber cutting machine subject to confiscation and having been the instrument of commission of an administrative offence, to administrative penalty for which the abovementioned citizens were exposed, which allows to consider the Limited Liability Company “StroyKomplect” as an appropriate applicant in the present case from the point of view of the adduced provisions of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”.

The Limited Liability Company “StroyKomplect” sees violation of its rights, guaranteed by Articles 15 (Section 4), 17 (Section 1), 35 (Sections 1 and 3) and 55 (Sections 1 and 3) of the Constitution of the Russian Federation and the Convention for the Protection of Human Rights and Fundamental Freedoms (Paragraph 1 of Article 6, Article 13 and Article 1 of the Protocol No. 1), by Section 1 of Article 3.7 and Section 2 of Article 8.28 of the Administrative Offences Code of the Russian Federation in the fact that these provisions allow confiscation of the instrument of commission of an administrative offence without making the owner of this property administratively answerable and exclude possibility of prescription of a proportionate penalty.

Accordingly, the subject-matter for consideration by the Constitutional Court of the Russian Federation in the present case are the provisions of Section 2 of Article 8.28 of the Administrative Offences Code of the Russian Federation as allowing, in the inter-connection with Section 1 of Article 3.7 of the present Code, confiscation of the instrument of commission of administrative offence belonging on the right of ownership not to the offender, but to other person, not made administratively answerable for this administrative offence.

2. According to the Constitution of the Russian Federation, in the Russian Federation private, State, municipal and other forms of property shall be recognized and shall be protected on an equal basis (Article 8, Section 2); everyone

shall have the right to use freely his (her) abilities and property for entrepreneurial and other economic activity not prohibited by law (Article 34, Section 1); the right of private property shall be protected by law; everyone shall have the right to have property and to possess, use and dispose of it both individually and jointly with other persons; nobody may be deprived of property except under a court order; forced alienation of property for State requirements may take place only subject to prior and fair compensation (Article 35, Sections 1-3).

At the same time, as the Constitutional Court of the Russian Federation has repeatedly indicated, the right of private property is not absolute; by virtue of Article 55 (Section 3) of the Constitution of the Russian Federation in the inter-connection with its other norms, in particular Articles 17 (Section 3) and 19 (Sections 1 and 2) restrictions of the right of property may be introduced by a federal law if they are necessary for the protection of other constitutionally significant values, including the rights and lawful interests of other persons, meet the requirements of justice, reasonableness and proportionality; for all that constitutional guarantees of protection of private property by law and admissibility of deprivation of property none other than by a court order, expressing the principle of inviolability of property, as well as constitutional guarantees of court protection are extended both on the sphere of civil law relations and on relations of the State and the person in public-law sphere (Judgments of 20 May 1997 No. 8-П, of 16 July 2008 No. 9-П and of 31 January 2011 No. 1-П).

Proceeding from the indicated constitutional guarantees, the property belonging to managing subjects on the right of ownership may be freely used by them for carrying out entrepreneurial activity, including through conclusion of various deals of civil law character (including contracts of lease, by which property is given for payment in temporary possession and use or in temporary use, as it is envisaged by Article 606 of the Civil Code of the Russian Federation). With it all the Civil Code of the Russian Federation establishes that in cases envisaged by law the property may be withdrawn from the proprietor without compensation by a court order as a sanction for commission of a crime or other offence (Paragraph 1

of Article 243). Norms of criminal and criminal procedure legislation (Section 2 of Article 2 and Paragraph “г” of Section 1 of Article 104.1 of the Criminal Code of the Russian Federation, Paragraph 1 of Section 3 of Article 81 of the Criminal Procedure Code of the Russian Federation) orientate toward the same understanding of confiscation of property – as a particular measure of public responsibility for an action which, as a general rule, has been committed by the owner of this property.

The Administrative Offences Code of the Russian Federation stipulates for confiscation of an instrument of commission of an administrative offence as one of the kinds of administrative penalty prescribed by a judge and defines it as compulsory uncompensated conversion into federal property or property of a subject of the Russian Federation of things not withdrawn from circulation; withdrawal from unlawful possession of a person having committed administrative offence of an instrument of the commission or of an object of an administrative offence subject, in accordance with the federal law, to return to the owner, as well as withdrawn from circulation or being in unlawful possession of a person having committed an administrative offence, on other reasons and on this ground subject to conversion into the property of the State or extermination (Paragraph 4 of Section 1 of Article 3.2, Section s1 and 3 of Article 3.7) is not regarded as confiscation.

Thus, in the administrative legislation (in contrast to the criminal and criminal procedure legislation) confiscation of an instrument of commission of an administrative offence as a form of penalty is not applied only in a case when respective property was in the possession of the offender unlawfully; in all other cases it is contemplated that instrument of commission of an administrative offence may be confiscated irrespective of whether it belongs to the offender on the right of property or not.

3. In accordance with the Constitution of the Russian Federation, natural resources shall be utilized and protected in the Russian Federation as the basis of life and activity of the peoples living on the territories concerned (Article 9,

Section 1); everyone shall have the right to a favourable environment, reliable information on the state of the environment and compensation for damage caused to his (her) health and property by ecological offence (Article 42).

Such natural resource as forest reserves, - in view of its vitally important multifunctional role and significance for the society as a whole, the need to secure steady development (balanced development of the economy and amelioration of state of the natural environment in the conditions of increase of global ecological significance of the forests of Russia and her fulfillment of respective international obligations), as well as rational utilization in the interests of the Russian Federation and its subjects - is a public property of the multinational people of Russia (Judgment of the Constitutional Court of the Russian Federation of 9 January 1998 No. 1-П), and consequently requires protection from unlawful infringements, which contemplates introduction of adequate measures of public law responsibility.

In particular, guarding of environment is a task of the legislation on administrative offences, as well as protection of lawful economic interests of physical and legal persons, society and the State; administrative penalty, being measure of responsibility for commission of an administrative offence established by the State, is applied in order to prevent commission of new offences both by the offender himself and by other persons (Article 1.2 and Section 1 of Article 3.1 of the Administrative Offences Code of the Russian Federation). Within the meaning of the adduced provisions of the Administrative Offences Code of the Russian Federation, administrative penalties envisaged by the legislator within the framework, determined by the Constitution of the Russian Federation by their effect are called upon to assist as effectively as possible the realization of tasks of the legislation on administrative offences.

Proceeding from this, the Administrative Offences Code of the Russian Federation contemplates differentiated approach to the establishment and application of administrative penalties, forms of which are enumerated in its Article 3.2. As follows from Article 3.3 of this Code, all administrative penalties

can be established and applied as basic administrative penalties, but some of them, such as warning or administrative fine, - only as basic penalties, and compensated withdrawal and confiscation of an instrument of commission of an administrative offence – both as basic and as supplementary administrative penalties (Sections 1 and 2), while for one administrative offence basic or basic and supplementary penalty may be prescribed from among penalties, indicated in respective sanction (Section 3).

Administrative offence in the field of guarding of the environment and use of nature, stipulated for by Section 2 of Article 8.28 of the Administrative Offences Code of the Russian Federation (illegal felling, damage of forest planting, committed with the use of mechanisms, means of auto- and moto-trasport, self-propelled machines and other technical equipment, if this activity does not contain criminally punishable action), entails, side by side with administrative fine, confiscation of an instrument of commission of an administrative offence. In the interconnection with provisions of Article 3.3 of the Administrative Offences Code of the Russian Federation this means that in the given case confiscation of the instrument of commission of an administrative offence is a supplementary administrative penalty and – by virtue of the construction of the norm itself – is always prescribed together with basic administrative penalty in the form of administrative fine. Accordingly, the court, adopting resolution in the case of the abovementioned administrative offence, is deprived of the possibility to prescribe only one administrative penalty – administrative fine.

4. Turning in a number of its decisions (Judgments of 25 January 2001 No. 1-П, of 27 April 2001 No. 7-П, of 17 July 2002 No. 13-П, Rulings of 9 April 2003 No. 172-O, of7 December 2010 No. 1570-O-O and others) to the question of general principles of juridical responsibility following from the Constitution of the Russian Federation, which in their essence pertain to the basics of the legal order, the Constitutional Court of the Russian Federation has come to the following conclusions.

As it follows from Article 54 (Section 2) of the Constitution of the Russian Federation, the juridical responsibility may come only for actions which are recognized as offences by a law which is in force at the moment of their commission. Presence of *corpus delicti* is thus a necessary ground for all types of juridical responsibility; signs of *corpus delicti*, first of all in the public law sphere, as content of the particular *corpuses delicti*, must conform to the constitutional principles of a democratic, law-governed State, including the requirement of justice, in its inter-relations with physical and legal persons as subjects of juridical responsibility. In its turn, presence of guilt as an element of the subjective side of *corpus delicti*, - is a universally recognized principle of making juridically answerable in all branches of law and any exception from it must be expressed directly and unequivocally, i.e. fixed directly in a law.

4.1. Within the meaning of Articles 49, 50, 52, 54 and 64 of the Constitution of the Russian Federation, the principles of the presumption of innocence and guilty responsibility, i.e. presence of guilt as a necessary element of *corpus delicti* (and, consequently, ground for making juridically answerable), express general principles of law in the course of application of State compulsion in the sphere of public responsibility both in criminal and to equal extent in administrative law. Less in the degree of harmfulness and public danger, compared with crimes, significance of administrative offences as a particular kind of public law delicts does not men that they can be excluded from the sphere of operation of constitutional right to court protection and fair trial.

Accordingly, rendering concrete the provisions of Articles 17 (Sections 1 and 3), 46 (Sections 1 and 2), 51 (Section 1), 54 (Section 2) and 55 (Section 3) of the Constitution of the Russian Federation, the Administrative Offences Code of the Russian Federation envisages in Article 1.5 that a person is subject to administrative responsibility only for those administrative offences in respect of which his/her guilt is established (Section 1); a person in respect of whom proceeding are conducted in the case of administrative offence is regarded as not guilty until his guilt is not proved in a procedure established by the present Code

and established by a resolution of a judge, body, official having considered the case, which has come into legal force (Section 2). Within the meaning of Section 1 of Article 1.5 of the present Code in inter-connection with Paragraph 2 of Section 1 of its Article 24.5, absence of guilt in commission of an administrative offence is one of the circumstances excluding proceedings in the case of an administrative offence.

The guilt of commission of an administrative offence is established in the course of proceedings in the case of an administrative offence. According to the Administrative Offences Code of the Russian Federation, administrative offence is recognized as committed intentionally, if a person having committed it realized illegal character of his/her action (inaction), foresaw its harmful consequences and wished that these consequences come or consciously admitted them or regarded them indifferently (Section 1 of Article 2.2); administrative offence is recognized as committed on carelessness, if a person having committed it foresaw the possibility of coming harmful consequences of his/her action (inaction), but without sufficient grounds self-sufficiently hoped to prevent these consequences or did not foresee coming of these consequences, although should and could foresee them (Section 2 of Article 2.2); legal person in recognized guilty of commission of administrative offence, if it is established that it had a possibility to observe rules and norms, for breach of which administrative responsibility is envisaged by the present Code or laws of the subjects of the Russian Federation, but it did not take all measures depending on it to observe these rules and norms (Section 2 of Article 2.1).

With the aim of thorough, full, objective and timely elucidation of circumstances of the commission of an administrative offence the official, authorized to institute proceedings in the case of administrative offence, draws up a record in which pieces of information are subject to be entered, necessary for resolution of the case; if in the record on an administrative offence pieces of information and circumstances necessary for resolution of the case of an administrative offence are not reflected (their list is open), a judge is entitled, in the

course of preparation to consideration of the case, to obtain on demand necessary supplementary materials (on which respective ruling is passed), and in the course of consideration of the case – to establish necessary circumstances, having called out as a witness a person to whom they may be known (Section 1 of Article 25.6, Section 2 of Article 28.2 and Paragraph 2 of Section 1 of Article 29.4 of the Administrative Offences Code of the Russian Federation).

The goal of the adduced legislative provisions in the course of the proceedings in the case of an administrative offence, envisaged in Section 2 of Article 8.28 of the Administrative Offences Code of the Russian Federation, is first of all establishment of the offender's guilt or its absence. They also grant opportunity to determine the owner of property, having served as instrument of commission of an administrative offence (if it does not belong to the offender), as well as the character of their inter-relations with the offender, although do not contemplate obligatory participation of the owner of the instrument of commission of an administrative offence in the proceedings in this case. But even if such person is brought to trial as a witness, his/her participation can in no way influence the prescription of administrative penalty in the form of confiscation of the instrument of commission of an administrative offence: by virtue of the character of sanction established by Section 2 of Article 8.28 of the Administrative Offences Code of the Russian Federation, confiscation of the instrument of commission of an administrative offence is applied in any case and irrespectively of whether it belongs to the offender or has been handed over to him for utilizing in lawful goals by the owner (directly or through employer, lessee etc.).

Consequently, uncompensated withdrawal to the revenue of the State of an instrument of commission of an administrative offence, envisaged by Section 2 of Article 8.28 of the Administrative Offences Code of the Russian Federation (mechanisms, means of auto- and moto-transport, self propelled machines and others), – as a sanction for commission of administrative offence, applied to the offender, – in essence is directed at the owner of respective property, because is prescribed irrespective of his guilt in the given offence.

4.2. As the Constitutional Court of the Russian Federation has repeatedly pointed out, the right to court protection is recognized and guaranteed in the Russian Federation according to universally recognized principles and norms of international law and in accordance with the Constitution of the Russian Federation as basic and inalienable human right on the basis of the principle of equality of all before the law and the court (Article 17, Sections 1 and 2; Article 19, Section 1; Article 46, Sections 1 and 2); this right includes not only the right to appeal to court, but also State guaranteed possibility to get real court protection by way of restoration of violated rights and freedoms; other does not conform to universal for all kinds of judicial proceedings, including administrative, requirement of effective restoration of rights by means of justice, answering the criteria of justice (Judgments of 2 February 1996 No. 4-П, of 3 February 1998 No. 5-П, of 28 May 1999 No. 9-П, of 11 May 2005 No. 5-П and others).

Analogous position is held by the European Court of Human Rights, also having repeatedly indicated that effectiveness of the facilities of legal protection means, in particular, that they must prevent presupposed violation or stop it, as well as grant adequate compensation for violation having already happened (Judgment of 26 October 2000 in the case “Kudla vs Poland”, of 30 November 2004 in the case “Klyakhin vs Russia” and others).

Meanwhile, within the literal meaning of the provisions of Section 2 of Article 8.28 of the Administrative Offences Code of the Russian Federation in the inter-connection with Section 1 of its Article 3.7, obliging a court to prescribe to the offender administrative fine with confiscation of the instrument of commission of an administrative offence, supplementary administrative penalty is prescribed irrespective of whether this property belongs to the person, in respect of whom the proceedings in this case are conducted, that is to the offender.

With it all the owner of the instrument of commission of an administrative offence, if he/she is not the person made administratively answerable, is deprived of the possibility of full value protection of his/her rights. The Administrative Offences Code of the Russian Federation not only does not require his/her calling

out in any form for participation in the proceedings in the case of administrative offence, but makes his/her possible participation senseless, because in the existing model of legal regulation elucidation of the fact what relation the owner of the instrument of commission of an administrative offence has to this offence is not contemplated, and neither of his objections can be recognized sufficient for non-adoption of a decision to confiscate property belonging to him.

4.3. Thus, provisions of Section 2 of Article 8.28 of the Administrative Offences Code of the Russian Federation – to the extent to which they, in the inter-connection with Section 1 of Article 3.7 of the present Code contrary to the requirements of the Constitution of the Russian Federation, admit as an administrative penalty confiscation of the instrument of commission of an administrative offence from the owner of this property not made administratively answerable and not recognized guilty of commission of an administrative offence in a lawful procedure – in breach of Article 55 (Section 3) of the Constitution of the Russian Federation unproportionately restrict the right of private property guaranteed by Article 35 (Sections 1 and 3) of the Constitution of the Russian Federation.

5. Realizing its constitutional powers in the field of guarding natural resources, the federal legislator is entitled to adopt measures directed at struggle with actions of persons carrying out management in the timber-industrial complex, if these actions lower (including by means of fictitious agreement connections, allowing to avoid confiscation of an instrument of commission of an administrative offence) the effectiveness of existing measures of administrative responsibility for offences in the sphere of forest utilization.

With application to the question of admissibility of prescription of a penalty in the form of confiscation of property having served as an instrument of commission or an object of a customs offence and not being a property of the person having committed it, the Constitutional Court of the Russian Federation in the Judgment of 14 May 1999 No. 8-П has formulated a legal position, by virtue of which the federal legislator is entitled to admit confiscation of property having

been an instrument or means of commission or an immediate object of a customs offence, irrespective of whether respective goods and means of transport are owned by the person having committed it as well as irrespective of whether this person is established; otherwise organizers of illegal transference of goods would have acquired opportunity to shift all responsibility on insolvent persons or persons residing abroad, which would undermine law and order in the sphere of customs relations and is incompatible with goals and tasks of customs regulation.

The adduced legal position can not be automatically extended on the whole sphere of administrative delicts relations, but it confirms the right of the federal legislator, when determining the instruments of the protection of interests of a person, society and the State from unlawful encroachments, – taking into consideration schemes which are worked out by persons carrying out management in timber-industrial complex in order to evade from sanctions applied for violation of nature-preserving legislation – to establish administrative responsibility of the owner of timber cutting technical equipment (for instance, in a case when timber cutting technical equipment was handed over to an offender in order to commit illegal forest tree-felling), including in the form of confiscation of respective property, fixing guarantees of his/her participation in the administrative proceedings. In any case such legal regulation, directed against possible abuses in the field of nature utilization, must answer the principles of juridical responsibility in public law sphere, following from the Constitution of the Russian Federation, including proportionality of the penalty to the character of the action committed.

Recognition of the provisions of Section 2 of Article 8.28 of the Administrative Offences Code of the Russian Federation in the interconnection with Section 1 of its Article 3.7 as not conforming to the Constitution of the Russian Federation does not mean that federal legislator is deprived of the right to insert amendments to the Administrative Offences Code of the Russian Federation, related to conditions and procedure of confiscation of property having been the instrument of commission of administrative offence envisaged by Section 2 of Article 8.28 of the Administrative Offences Code of the Russian Federation, if this

administrative offence has been committed not by the owner of this property, but by other person, to whom it has been handed over for illegal activity.

This does not mean either that in the system of legal regulation in force, including regarding legislative characteristic of guilt of a legal person of commission of administrative offence (Section 2 of Article 2.1 of the Administrative Offences Code of the Russian Federation), the possibility is excluded to make administratively answerable in the procedure established by the Administrative Offences Code of the Russian Federation a legal person – owner of the property having been the instrument of commission of an administrative offence, if it is established that this property has been handed over to other persons by him/her with the aim to carry out illegal activity prohibited by Section 2 of Article 8.28 of the present Code.

Concluding from the above and pursuant to Section 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 Section 2 of Article 8.28 of the Administrative Offences Code of the Russian Federation as not conforming to the Constitution of the Russian Federation, its Articles 35 (Sections 1 and 3), 46 (Section 1), 54 (Section 3) and 55 (Section 3) to the extent to which these provisions admit as administrative penalty confiscation of the instrument of commission of an administrative offence belonging on the right of property to a person, not made administratively answerable for this administrative offence and not recognized guilty of its commission in a lawful procedure.

2. The cases of G.A.Dvryashin and D.V.Strogonov are to be reconsidered in the part concerning prescription of administrative penalty in the form of confiscation of the instrument of commission of an administrative offence (multi-functional timber cutting machine-harvester "John Deere 1270D", belonging on

the right of property to the Limited Liability Company “StroyKomplect”), provided there are no other obstacles to it.

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 subject to immediate publication in Rossiyskaya Gazeta and the Collection of Laws of the Russian Federation and official publications of bodies of State power of the Zabaikalsky Territory. The Judgment shall also be published in the Bulletin of the Constitutional Court of the Russian Federation.

The Constitutional Court
of the Russian Federation

No. 6-П