IN THE NAME OF THE RUSSIAN FEDERATION

Constitutional Court of the Russian Federation

Judgment

of 29 March 2011 No. 2-П

In the case concerning the review of constitutionality of the provisions of Paragraph 4 of Section 1 of Article 16 of the Federal Law "On General Principles of Organization of Local Self-Government in the Russian Federation" in connection with the complaint of the municipal entity – city district "The City of Chita"

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 municipal entity – city district "The City of Chita", PhD in Law D.V.Khodukin, 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,

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 Paragraph 4 of Section 1 of Article 16 of the Federal Law "On General Principles of Organization of Local Self-Government in the Russian Federation".

The reason for the consideration of the case was the complaint of the municipal entity – city district "The City of Chita". The ground for the consideration of the case was the discovered uncertainty of whether the provision

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

Having heard the report of Judge-Rapporteur N.S.Bondar', statements by the parties' representatives, interventions by the participants invited to the hearing: V.V.Karpov for the Ministry of Justice of the Russian Federation, 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:

Applicant in the present case, municipal entity – city district "The City of Chita" contests constitutionality of Paragraph 4 of Section 1 of Article 16 of the Federal Law of 6 October 2003 No. 131-ФЗ "On General Principles of Organization of Local Self-Government in the Russian Federation", which ascribed to the issues of local significance of the city district organization within the limits of the city district of electric, heat and water supply of the population, drainage and supply of fuel.

By the decision of the Court of Arbitration of the Chita Region of 29 June 2009 (left unchanged by the resolution of the Federal Court of Arbitration of the East-Siberian District of 16 September 2009) in favour of the federal state unitary enterprise "The 880th Central Automobile Repair Plant" of the Ministry of Defense of the Russian Federation as an organization carrying out manufacturing and distribution of heat energy, damages were claimed from the municipal entity – city district "The City of Chita" in the form of difference between the economically founded tariff on the production of heat energy, approved by the Regional Service on Tariffs and Price Formation of the Zabaikalsky Territory, and the tariff on its consumption for the population having not provided to the energy manufacturer 100% compensation of expenses.

By ruling of the Higher Court of Arbitration of the Russian Federation of 11 January 2010 the transmission of the case to the Presidium of the Higher Court of

Arbitration of the Russian Federation for reconsideration in the supervisory procedure was rejected.

When adopting these court acts, courts of arbitration proceeded from the argument that organization of heat supply, by virtue of Article 16 of the Federal Law "On General Principles of Organization of Local Self-Government in the Russian Federation", is a question of local significance and therefore financial obligations, arising in connection with its resolution, including financing of the inter-tariff difference, must be fulfilled at the expense of the resources of local budget; the fact that the State regulation of tariffs on the heat energy pertains to the competence of bodies of State power of subjects of the Russian Federation, and that bodies of local self-government do not have respective powers, in the opinion of the courts of arbitration, has no juridical importance.

The applicant believes that Paragraph 4 of Section 1 of Article 16 of the Federal Law "On General Principles of Organization of Local Self-Government in the Russian Federation", admitting – within the meaning attributed to it by the practice of courts of arbitration – placement on the bodies of local self-government of the burden of expenses on obligations arising as a result of decisions adopted by bodies of State power of subjects of the Russian Federation within their powers, without granting corresponding compensation, limits independence of local self-government in the issues of local significance, violates property rights of municipal entities and thus contradicts Articles 7, 10, 12, 72 (Section 1), 132 and 133 of the Constitution of the Russian Federation.

1.2. 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 upon complaints of citizens and associations of citizens, including municipal entities, reviews constitutionality of contested legal provisions only in the part, in which they were applied in a particular case of the applicant consideration of which has been completed in court, and infringe upon the constitutional rights and freedoms indicated in the complaint; passing the decision on the case, the Constitutional Court of the Russian Federation assesses both the

literal meaning of these legal provisions 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 norms.

As it follows from the materials submitted to the Constitutional Court of the Russian Federation, Paragraph 4 of Section 1 of Article 16 of the Federal Law "On General Principles of Organization of Local Self-Government in the Russian Federation" was applied by the courts of arbitration as a normative-legal ground for placing on the municipal entity – city district "The City of Chita" financial obligations of compensation to the heat-supplying organization of expenses, connected with establishment of the tariff on the heat energy produced by it for the population on the level lower than economically founded, in the part in which it ascribes organization of heat-supplies of the population within the limits of the city district to issues of local significance of the city district.

Accordingly, normative provision of Paragraph 4 of Section 1 of Article 16 of the Federal Law "On General Principles of Organization of Local Self-Government in the Russian Federation", ascribing organization of heat-supplies of the population within the limits of the city district to issues of local significance, is a subject-matter for consideration by the Constitutional Court of the Russian Federation in the present case to the extent to which it serves as a normative-legal ground for placement on the city districts of financial obligations on compensation to the heat supplying organizations of the expenses, caused by establishment of tariffs on respective services for the population on the level lower than economically founded.

2. The Constitution of the Russian Federation, fixing the fundamentals of the constitutional order of the Russian Federation as democratic law-governed State, recognizes and guarantees local self-government which is independent within the limits of its powers and does not enter into the system of bodies of State power (Article 12).

Developing these provisions, the Constitution of the Russian Federation stipulates that local self-government in the Russian Federation shall provide for

independent resolution by the population of issues of local significance (Article 130, Section 1); the right of citizens to participate in local self-government by means of referendum, elections, other forms of direct expression of their will, through elected and other bodies of local self-government pertains to basic rights and freedoms, it shall be recognized and guaranteed according to universally recognized principles and norms of international law and in accordance with the Constitution of the Russian Federation (Article 2; Article 17, Section 1; Article 32, Section 2; Article 130, Section 2); local self-government shall be guaranteed by the right to court protection, to compensation of additional expenses arising as a result of decisions adopted by bodies of State power, by a ban of restrictions of the rights of local self-government established by the Constitution of the Russian Federation and federal laws (Article 133); bodies of local self-government shall independently manage municipal property, form, approve and implement local budget, introduce local taxes and levies, ensure the protection of public order, resolve other issues of local significance and may also be vested by law with certain State powers and accordingly receive material and financial resources which are necessary for their implementation (Article 132).

Understanding of local self-government as territorial self-organization of the population recognized and guaranteed by the Constitution of the Russian Federation and intended to provide for his independent and on his own responsibility resolution of the issues of local significance contemplates, as the Constitutional Court of the Russian Federation repeatedly indicated, that municipal power is by its nature the power of the local community itself, and the population of the municipal entity acts as a subject of independent exercise of the municipal power – directly and through bodies of local self-government (Judgment of 2 April 2002 No. 7-П, Rulings of 10 April 2002 No. 92-О, of 6 March 2008 No. 214-О-П and others). This is the condition of placement on the bodies of local self-government of obligations of resolution of issues of maintenance of life of the population of a particular municipal entity, following from the nature of local self-

government, proper execution of which is the imperative of a democratic, law-governed State in the sphere of organization of the municipal public authority.

Fixing independence of local self-government as one of the basics of its constitutional law status, the Constitution of the Russian Federation simultaneously proceeds from the presumption that local self-government must be carried out in accordance with general principles of its organization, establishment of which pertains to joint jurisdiction of the Russian Federation and the subjects of the Russian Federation (Article 72, Paragraph "н" of Section 1), and the activity of the bodies of local self-government must be lawful (Article 15, Section 2). It follows from these provisions of the Constitution of the Russian Federation in interconnection with the provisions of its Articles 1 (Section 1), 4 (Section 2), 71, 72 (Section 1) and 76 (Sections 1 and 2), in particular, that independence of local self-government is determined by its competence which is set up on the basis of the Constitution of the Russian Federation in a law and includes subject spheres of activity of local self-government and powers to resolve issues of local significance. This conclusion conforms to the legal positions of the Constitutional Court of the Russian Federation set forth in a number of its judgments, including the one of 16 October 1997 No. 14-П and of 30 November 2000 No. 15-П.

Realizing in accordance with the Constitution of the Russian Federation its discretional powers in the sphere of legal regulation of general principles of organization of local self-government, including establishment of legal basics of competence of the municipal entities within the framework of which the bodies of local self-government realize their powers independently, the legislator can not act arbitrarily. The decisions adopted by him in this sphere must conform to the constitutional basics of delimitation of issues and powers between the Russian Federation and the subjects of the Russian Federation, take into account the constitutional nature of local self-government as territorial level of public authority, the most approximate to the population, and at the same time meet the requirement of formal certainty following from the constitutional principle of equality of all before the law, which contemplates clear, precise and non-

contradictory determination of competence of municipal entities, consecutive delimitation of issues of local significance, resolution of which is placed on bodies of local self-government, and issues of State significance, resolution of which is placed on the federal bodies of State power and the bodies of State power of the subjects of the Russian Federation, as well as mutually coordinated regulation of the powers of bodies of local self-government by legal acts of various branches of law.

Observance of these requirements is a necessary condition for securing on legislative level of the principle of equality of rights of municipal entities as territorial communities of citizens, collectively realizing the right to exercise local self-government on the basis of the Constitution of the Russian Federation which in the sphere of financial and budget relations contemplates, in particular, juridical equality among municipal entities in their inter-relations with bodies of State power, which in the end is one of the guarantees of equality of rights and freedoms of man and citizen irrespective of place of residence (Judgment of the Constitutional Court of the Russian Federation of 11 November 2003 No. 16-П).

Other would mean that the legislator has a right to fix after local self-government powers uncertain in volume, and the bodies of local self-government – to realize them in an arbitrary way, which would lead to breach of the principle of delimitation of powers between territorial levels of public authority, put to doubt proper financial and economic maintenance of local self-government proportionate to its powers, and as a result would create threat of non-fulfillment or improper fulfillment by bodies of local self-government of their constitutional duties, including those related to guaranteeing rights and freedoms of man and citizen (Articles 2 and 18 of the Constitution of the Russian Federation).

3. The Federal Law “On General Principles of Organization of Local Self-Government in the Russian Federation”, according to its preamble, establishes, in conformity with the Constitution of the Russian Federation, general legal, territorial, organizational and economic principles of organization of local self-government in the Russian Federation, determines State guarantees of its

realization. Within the framework of these general principles it also fixes legal grounds of competence of municipal entities, including determination of the content and composition of issues of local significance, their differentiation by types of municipal entities, establishment of powers of bodies of local self-government for resolving of such issues, as well as the rights of bodies of local self-government to resolve questions not ascribed to issues of local significance.

The mentioned Federal Law ascribes to the number of issues of local significance of city district organization within the limits of a city district of heat supply of the population (Paragraph 4 of Section 1 of Article 16). Certain powers in this sphere were vested in the bodies of local self-government within the framework of the previous legal regulation too (Paragraph 4 of Article 62 of the Law of the RSFSR of 6 July 1991 No. 1550-I "On Local Self-Government in the RSFSR", Sub-Paragraph 13 of Paragraph 2 of Article 6 of the Federal Law of 28 August 1995 No. 154-ФЗ "On General Principles of Organization of Local Self-Government in the Russian Federation").

Heat supply, as a public service connected with satisfaction of basic, vitally important needs of a human being, is provided for in the Russian Federation as social State (Article 7, Section 1, of the Constitution of the Russian Federation), *inter alia*, with participation of local self-government as public authority, the most approximate to the population. Ascription of some questions in the sphere of heat supply by the federal legislator, namely, its organization, connected with maintaining a steady and coordinated functioning of the subjects carrying out manufacturing of the heat energy and its realization to consumers to the list of issues of local significance of city districts, with the aim to secure for citizens residing on the territory of a respective municipal entity uninterrupted access to the amount of heat energy of proper quality, necessary for normal vital activity, conforms to the legal position of the Constitutional Court of the Russian Federation, expressed in the Judgment of 20 December 2010 No. 22-П. By virtue of this position, the main goal of local self-government is resolution of questions of

local significance, possession, utilization and management of municipal property and thus satisfaction of the basic vital needs of the population of municipal entities.

Accordingly, such legal regulation responds to the very nature and constitutional destination of local self-government as a specific form of exercise of public authority in the provinces and as such can not be regarded as violating constitutional rights of local self-government.

4. The provision of Paragraph 4 of Section 1 of Article 16 of the Federal Law "On General Principles of Organization of Local Self-Government in the Russian Federation", placing on city districts organization of heat supply of the population within the limits of a city district, has a character of a general norm – it establishes respective direction of activity of these municipal entities, but not the volume of powers which they have in order to resolve this question of local significance.

These powers, as well as financial obligations of the city districts in the sphere of heat supply caused by them, are determined in the system of legal regulation (including, apart from the Federal Law "On General Principles of Organization of Local Self-Government in the Russian Federation", special federal laws regulating legal relations in this sphere and budget legislation) and with regard to respective competence of other territorial levels of public authority, which follows from Section 2 of Article 16.1 of the Federal Law "On General Principles of Organization of Local Self-Government in the Russian Federation". Within its meaning, bodies of local self-government of a city district do not have the right in cases, not envisaged by the federal law, to resolve questions not ascribed to the issues of local significance of a city district, to participate in carrying out of other State powers (not transferred to them in accordance with Article 19 of the same Federal Law), as well as they have no right to resolve other questions, ascribed to the competence of bodies of local self-government of other municipal entities, bodies of State power or, on the contrary, excluded from their competence by the federal laws and the laws of the subjects of the Russian Federation.

4.1. According to the legal position of the Constitutional Court of the Russian Federation expressed in the number of its decisions (Rulings of 8 July 2004 No. 255-O, of 8 February 2007 No. 288-O-П and of 8 February 2007 No. 291-O-П), it directly follows from the prescriptions of the Constitution of the Russian Federation, according to which economic activity directed at monopolization and unfair competition shall not be permitted (Article 34, Section 2), and establishment of legal grounds of unified market and basic principles of pricing policy are in the jurisdiction of the Russian Federation (Article 71, Paragraph "ж"), that State regulation of prices is possible and necessary.

By moment of the rise of relations, having caused petition to the Constitutional Court of the Russian Federation in the present case, the distribution of powers among federal bodies of State power, bodies of State power of the subjects of the Russian Federation and bodies of local self-government was realized, in particular, on the basis of the Federal Law of 14 April 1995 No. 41-ФЗ "On State Regulation of Tariffs on Electric and Heat Energy in the Russian Federation" (lost force as of 1 January 2011), by which regulation of prices (tariffs) on heat energy was considered as a State function contemplating administrative-authoritative influence on members of the civil turnover.

Accordingly, realization of this function was placed by the abovementioned Federal Law on bodies of State power of the Russian Federation and bodies of State power of the subjects of the Russian Federation: the Government of the Russian Federation or a federal body of executive power in the field of tariffs regulation were vested with power to establish fundamental principles of price formation on electric and heat energy on the territory of the Russian Federation, approval of rules of State regulation and application of the tariffs on electric and heat energy, establishment of level-limits (minimum and (or) maximum) for tariffs on heat energy provided to the consumers by energy-supplying organizations (Indentions 3, 4 and 30 of Section 1 of Article 5); in their turn, bodies of State power of the subjects of the Russian Federation introduced tariffs on heat energy in the framework of level-limits (minimum and (or) maximum) set up by the federal

bodies of executive power in the field of regulation of tariffs, guided by basics of price formation on heat energy on the territory of the Russian Federation, the rules of State regulation and application of tariffs on heat energy and other normative legal acts and methodical directives approved by the Government of the Russian Federation or a federal body of executive power in the field of tariff regulation (Indentions 4 and 5 of Section 1, Section 3 of Article 6).

As far as the bodies of local self-government are concerned, they were not directly vested with tariff regulation powers in the field of heat supply by the Federal Law "On State Regulation of Tariffs on Electric and Heat Energy in the Russian Federation" and provided organization of heat supply of the population by other means prescribed by law. The Federal Law "On General Principles of Organization of Local Self-Government in the Russian Federation", in the wording in force at that period as directly excluding regulation by bodies of local self-government of tariffs on goods and services of organizations of communal complex – manufacturers of goods and services in the sphere of heat supply (Paragraph 4.1 of Section 1 of Article 17) proceeded exactly from this argument.

In a similar way these powers in the sphere of heat supply are distributed by the Federal Law of 27 July 2010 No. 190-ФЗ "On Heat Supply", having fully entered into force from 1 January 2011, in normative unity with corresponding provisions of the Federal Law "On General Principles of Organization of Local Self-Government in the Russian Federation" in the wording in force. Thus, the function of regulation of tariffs on services of heat supplying organizations is placed on the Russian Federation and subjects of the Russian Federation jointly; with it all these are bodies of executive power of subjects of the Russian Federation which establish tariffs on heat energy provided to the population by heat supplying organizations, subject to implementation within the framework of level-limits of tariffs set up by a federal body of executive power in the field of tariffs regulation in the sphere of heat supply.

Accordingly, Federal Law of 6 October 1999 No. 184-ФЗ "On General Principles of Organization of Legislative (Representative) and Executive Bodies of

State Power of the Subjects of the Russian Federation" ascribes to the powers of bodies of State power of the subjects of the Russian Federation on matters of joint jurisdiction, realized by these bodies independently at the expense of the resources of budgets of the subjects of the Russian Federation (with the exception of subsidies from the federal budget), establishment of prices (tariffs) on goods (services) subject to State regulation in accordance with the legislation of the Russian Federation and exercise of control over their implementation, as well as realization of powers in the sphere of heat supply, envisaged by the Federal Law "On Heat Supply" (Sub-Paragraphs 55 and 67 of Paragraph 2 of Article 26.3).

4.2. The federal legislator regulates prices (tariffs) in the sphere of heat supply in accordance with the principles of securing accessibility of heat energy, economic justification of income and expenses of heat supplying organizations on manufacturing and transmission of heat energy, for realization of which special legal instruments are used, intended to keep up balance between economic interests of heat supplying organizations and the interest of consumers. To these goals establishment of level-limit (minimum and (or) maximum) levels of tariffs on heat energy provided by heat supplying organizations to the consumers is foreseen, and fixing as a general requirement conforming of the tariff on heat energy approved for consumers to its level-limit (Paragraph 4 of Section2 of Article 7, Paragraphs 2 and 4 of Section 1 of Article 8, Sections 7 and 8 of Article 10 of the Federal Law "On Heat Supply", accordingly Indention 30 of Section 1 of Article 5, Indentions 4 and 5 of Section 1 of Article 6 of the Federal Law "On State Regulation of Tariffs on Electric and Heat Energy in the Russian Federation").

Introduction of level-limit tariffs, that is rate-limit of the price of respective products, is aimed at counteraction against monopolization and unfair competition, acts as a State guarantee of accessibility of heat energy resources to the consumers, first of all to the population, hinders economically unfounded growth of tariffs on heat energy, contemplates the possibility of establishment of privileged tariffs (Sections 13-15 of Article 10 of the Federal Law "On Heat Supply", Section 13 of Article 2 of the Federal Law "On State Regulation of Tariffs on Electric and Heat

Energy in the Russian Federation") and thus is called upon not to permit abrupt deterioration of social condition of citizens.

Application of these measures in the framework of tariff regulation, however, presupposes rise of a difference between approved tariff for the consumers and economically founded tariff, reflecting real expenses of heat supplying organization on production of heat energy and, accordingly, predetermines the need to compensate in such cases the heat supplying organization of its economic losses. The legislator is obliged to establish proper legal mechanism of such compensation by following from the Constitution of the Russian Federation, its Articles 8, 17, 34, 35 and 55 (Section 3), and from the legal position of the Constitutional Court of the Russian Federation (Judgments of 18 July 2003 No. 14-П, of 16 July 2004 No. 14-П, of 31 May 2005 No. 6-П, of 28 February 2006 No. 2-П) requirements, by virtue of which, when regulating entrepreneurial activity of commercial organizations, one should proceed from the idea that possible restrictions by federal law of the rights of possession, utilization and management of property, as well as freedom of entrepreneurial activity and freedom of contract, pursuant to general principles of law, must meet the requirements of justice, be adequate, proportional, balanced and necessary for the protection of basic constitutional values, including rights and lawful interests of other persons, and State intervention must secure the balance of private and public elements in the sphere of economic activity.

So far as the rise of inter-tariff difference is a direct consequence of realization of powers of State regulation of prices (tariffs) on heat energy, the subject which is obliged to compensate to heat supplying organization expenses caused by establishment of tariffs lower than economically founded must be the public-territorial entity whose authorized organ adopted respective tariff decision, i.e. the subject of the Russian Federation. This obligation of a subject of the Russian Federation follows also from the Rules of State Regulation and application of Tariffs on Electric and Heat Energy in the Russian Federation, approved by the Resolution of the Government of the Russian Federation of 26 February 2004 No.

109 and allowing application of privileged tariffs on heat energy (power) in the presence of respective decision of regulating organ, indicating consumers (groups of consumers), in respect of which the right to privileges, grounds for granting privileges and the procedure of compensations falling incomes of guaranteeing providers, energy supplying organizations, energy marketing organizations, whose consumers include the population, are legislatively established (Paragraph 26).

Meanwhile, since federal legislation on heat supply does not directly define the legal nature of inter-tariff difference and does not establish neither authorized subject nor concrete organizational, legal and financial-budgetary mechanisms of compensation to heat supplying organizations of losses caused by application of a tariff on heat energy for consumers, which does not provide for full compensation of economically justified expenses on its production, in the law-applying practices (including the one based on legal regulation exercised by subjects of the Russian Federation as rendering concrete federal legislation) respective compensatory duties are placed on local self-government.

Formal ground for it (which is confirmed by decisions of courts of arbitration, adopted in respect of the applicant in the present case) is broad interpretation of Paragraph 4 of Section 1 of Article 16 of the Federal Law “On General Principles of Organization of Local Self-Government in the Russian Federation” which, as a matter of fact, is considered as obliging city districts not only to exercise organizational activity in the sphere of heat supply of the population, but also to bear full responsibility for compensation to heat supplying organizations of losses arising owing to the difference between economically founded tariff and tariff approved for consumers.

4.3. According to the Budget Code of the Russian Federation, budgets of the public law entities are intended for execution of expense obligations of a respective public territorial entity, which are determined by delimitation of powers of the federal bodies of State power, bodies of State power of the subjects of the Russian Federation and bodies of local self-government established by the legislation of the Russian Federation and in accordance with which the formation of expenses of

budgets of budgetary system of the Russian Federation is carried out (Articles 13, 14, 15 and 65).

For instance, expense obligation of a municipal entity arise as a result of adoption of municipal legal acts on issues of local significance and other issues which, according to federal laws, can be resolved by bodies of local self-government, as well as conclusion by a municipal entity (or on behalf of a municipal entity) of agreements (contracts) on these issues, adoption of municipal legal acts when bodies of local self-government exercise certain State powers delegated to them, conclusion on behalf of a municipal entity of agreements (contracts) by the municipal fiscal institutions (Paragraph 1 of Article 86 of the Budget Code of the Russian Federation). Adduced legal provisions correspond to the provisions of the Federal Law "On General Principles of Organization of Local Self-Government in the Russian Federation", by virtue of which financial obligations arising in connection with resolution of issues of local significance are executed at the expense of resources of local budgets (with the exception of subsidies granted to local budgets from the federal budget and budgets of the subjects of the Russian Federation) (Section 2); federal laws, laws of the subjects of the Russian Federation must not contain provisions determining the volume of expenditures at the expense of the means of local budgets (Section 3).

Accordingly, financing from the resources of local budgets of expense obligations which rose as a result of decisions adopted by bodies of State power is not permitted. This conforms to the constitutional principles of financial and economic maintenance of local self-government, by virtue of which the property necessary for fulfilling tasks placed on local self-government must be in the municipal possession, and the population – directly or through the bodies of local self-government – independently in the framework of the law determines concrete directions and volumes of use of the municipal property, including resources of local budgets, proceeding from the interests determined by the needs of direct maintenance of vital activity of local community.

As the analysis of the regional legal regulation shows, in some subjects of the Russian Federation, in particular, in Zabaikalsky Territory, the practice has formed to grant local budgets from the budget of a subject of the Russian Federation inter-budgetary transfers in the form of subsidies for compensation of expenses of organizations rendering services in heat supply to the population of municipal entities. And here the amounts, conditions of granting and spending of such inter-budget transfers are determined by the subjects of the Russian Federation at their own discretion and may not fully cover the expenses of a municipal entity. This is not considered by courts of arbitration as a ground to free city districts from the duty to make respective expenses from the resources of local budget.

Meanwhile, according to the Budget Code of the Russian Federation subsidies to local budget from the budget of a subject of the Russian Federation mean inter-budgetary transfers granted to the budgets of municipal entities with the aim to co-finance expense obligations, arising in course of exercising powers of bodies of local self-government in the issues of local significance (Paragraph 1 of Article 139), to which payments to heat supplying organization of compensation to cover inter-tariff difference, as well as establishment of respective tariffs, do not pertain.

Consequently, placing on city districts of the duty to fulfill financial obligations arising from decisions adopted by bodies of executive power of the subjects of the Russian Federation within the framework of their competence, violates not only the principle of independence of budgets, established by the Budget Code of the Russian Federation as rendering concrete constitutional fundamentals of the financial system of the State (Article 31), but also the constitutional principle of independence of local self-government, including in management of municipal property, as well as constitutional right of citizens to carry out local self-government and thus contradicts the Constitution of the Russian Federation, its Articles 130 (Section 1), 132 (Section 1) and 133.

5. According to Section 6 of Article 7 of the Federal Law “On Heat Supply”, bodies of local self-government may, by a law of a subject of the Russian Federation, be vested with powers on State regulation of prices (tariffs) on heat

energy (with the exception of that produced by electric stations carrying out manufacturing in the regime of combine production of electric and heat energy) issued directly by the sources of heat energy, providing supply of heat energy of consumers, disposed on the territory of one municipal entity (analogous possibility was envisaged also in Section 6 of Article 6 of the Federal Law "On State Regulation of Tariffs on Electric and Heat Energy in the Russian Federation").

In case of delegation of these powers to bodies of local self-government, accompanying obligation to compensate to heat supplying organization of inter-tariff difference is also placed on them. Within the meaning of the adduced legal provisions, this obligation can be placed on the bodies of local self-government as a separate State power with observance of the procedure established by the federal legislation, namely, as indicated in Article 19 of the Federal Law "On General Principles of Organization of Local Self-Government in the Russian Federation", by adoption of a law of a subject of the Russian Federation, which must meet the requirements established by this Article and be put into execution annually by a law of a subject of the Russian Federation on the budget of a subject of the Russian Federation on the next financial year, on the condition that it envisages granting of subsidies for exercise of these powers.

Developing these provisions the Budget Code of the Russian Federation (Article 86) establishes that expense obligations, arising in connection with exercise by a municipal entity of delegated State powers, shall be fulfilled at the expense and within the limits of subsidies, specially granted from the budget of a subject of the Russian Federation. This procedure, according to the legal position of the Constitutional Court of the Russian Federation, expressed in the Ruling of 5 February 2009 No. 250-O-П, is binding in all cases.

It follows from this that obligation to compensate losses of heat supplying organizations in the form of inter-tariff difference, arisen as a result of establishment by a body of executive power of a subject of the Russian Federation of a tariff on heat energy for population on the level lower than economically founded, may be placed on bodies of local self-government of city districts only in

case of vesting them with respective powers in the procedure established by the Federal Law “On General Principles of Organization of Local Self-Government in the Russian Federation” with granting financial and material means, necessary for their realization, including compensation of inter-tariff difference.

Accordingly, without vesting in the bodies of local self-government of city districts of such State powers, subjects of the Russian Federation are not entitled to grant to local budgets inter-budgetary transfers of purposeful destination for covering of the abovementioned expenses, because this would mean, in essence, placement of State powers on bodies of local self-government in breach of the order established by the federal legislation.

6. Thus, the provision of Paragraph 4 of Section 1 of Article 16 of the Federal Law “On General Principles of Organization of Local Self-Government in the Russian Federation”, ascribing to issues of local significance of a city district organization within the bounds of the city district of heat supply of the population, does not conform to the Constitution of the Russian Federation, its Articles 12, 130 (Section 1), 132 and 133 to the extent to which in the system of legal regulation in force it serves as normative-legal basis for placement on city districts financial obligations of compensation to heat supplying organizations of additional expenses caused by establishment by authorized body of executive power of a subject of the Russian Federation of a tariff for their services on a level lower than economically founded with the absence of a law of a subject of the Russian Federation adopted in the procedure established by the federal law and vesting bodies of local self-government with respective powers and granting financial and material means, including compensation of inter-tariff difference, necessary for their realization.

Concluding from the above and pursuant to Section 2 of Article 71, Articles 72, 74, 75, 79 and 1000 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation” the Constitutional Court of the Russian Federation

h e l d:

1. To recognize the provision of Paragraph 4 of Section 1 of Article 16 of the Federal Law "On General Principles of Organization of Local Self-Government in the Russian Federation", ascribing to issues of local significance of a city district organization within the bounds of the city district of heat supply of the population, as not conforming to the Constitution of the Russian Federation, its Articles 12, 130 (Section 1), 132 and 133 to the extent to which in the system of legal regulation in force it serves as normative-legal basis for placement on city districts financial obligations of compensation to heat supplying organizations of additional expenses caused by establishment by authorized body of executive power of a subject of the Russian Federation of a tariff for their services on a level lower than economically founded with the absence of a law of a subject of the Russian Federation, adopted in the procedure established by the federal law and vesting bodies of local self-government with respective powers and granting financial and material means, including compensation of inter-tariff difference, necessary for their realization.

2. The case with participation of the municipal entity – city district "The City of Chita" is to be reconsidered according to the established procedure, 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, 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

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