

IN THE NAME OF THE RUSSIAN FEDERATION

Constitutional Court of the Russian Federation

Judgment

of 14 May 2012 No. 11-П

In the case concerning the review of constitutionality of the provisions of Paragraph 4 of Section 1 of Article 446 of the Civil Procedure Code of the Russian Federation in connection with complaints of F.Kh. Gumerova and Yu. A. Shikunov

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, 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, V.G.Yaroslavtsev,

in the attendance of F.Kh.Gumerova and her representative lawyer K.N.Vinokurov, Representative of the Council of Federation, PhD in Law A.S.Solomatkin, 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, Item 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 Paragraph 2 of Section 1 of Article 446 of the Civil Procedure Code of the Russian Federation.

The reason for the consideration of the case were complaints of F.Kh. Gumerova and Yu. A. Shikunov. The ground for the consideration of the case was

the discovered uncertainty of whether the legal provision contested by the petitioners is in conformity with the Constitution of the Russian Federation.

Since both complaints relate to one and the same subject, the Constitutional Court of the Russian Federation, guided by Article 48 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, merged cases on these complaints in one proceeding.

Having heard the report of Judge-Rapporteur N.S.Bondar’, statements by parties’ representatives, interventions by the representatives invited to the hearing: Ye.A.Borisenko 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:

1. Paragraph 2 of Section 1 of Article 446 of the Civil Procedure Code of the Russian Federation, determining the kinds of property belonging to a citizen-debtor on the right of ownership, upon which execution can not be levied by executive documents, ascribes to such property housing (its parts), if for the citizen-debtor and members of his family living together in the housing belonging to them it is the only housing suitable for permanent residence, with the exception of property indicated in this Paragraph, if it is an object of mortgage and execution may, in accordance with the legislation on mortgage, be levied upon it.

1.1. Kirovsky District Court of the City of Ufa by its ruling of 26 October 2010 satisfied application of F.Kh.Gumerova on alteration of the order of execution of the decision of Kalininsky District Court of the City of Ufa of 1 April 2008 on exaction on the loan agreement of 6 March 2002 of monetary resources, including principal debt, agreement rate and expenses on payments for representative’s services in total sum of more than 3 million rubles. Levying execution upon a share of 1/3 in the ownership right of the debtor on a dwelling house by way of realization of this share on public auction, the court proceeded from the fact that in the time of conduction of executive proceedings the debtor did

not deposit any monetary resources in account of clearing off the debt, and all measures undertaken by the bailiffs (imposing arrest on property on the sum of 6280 rubles and the levy of execution upon pension) did not bring effective result. Taking these circumstances into account, the court came to the conclusion that the balance of interests of the participants of executive proceedings can be reached by way of extending the exaction to the share of the housing belonging to the debtor on the right of ownership and that such decision would not lead to violation of his social rights, since his right of property on a share amounting to 2/3 of the right of ownership on the housing measuring 332,5 m² would be preserved.

By ruling of the Civil Board of the Supreme Court of the Republic of Bashkortostan of 23 June 2011 the ruling of Kirovsky District Court of the City of Ufa of 26 October 2010 was repealed, the case directed to new consideration to the same court which, by ruling of 22 September 2011, left the claim of F.Kh.Gumerova without satisfaction, having indicated that the dwelling house being in the debtor's ownership was for him the only one suitable for permanent residence, in which he is registered, and therefore, by virtue of Article 446 of the Civil Procedure Code of the Russian Federation, the execution may not be levied upon it.

With reference to the same Article of the Civil Procedure Code of the Russian Federation Dorogomilovsky District Court of the City of Moscow by the decision of 13 May 2008, left without change by ruling of the Civil Board of Moscow City Court of 11 September 2008, rejected the suit of Yu.A.Shikunov on levying execution and recognition of the right of ownership on a share of 1/4 in the right of ownership on a housing – apartment of 81 m² belonging to the defendant. Rejecting the suit, determined by the fact that the decision of the same court of 17 June 2004, having entered into force earlier, on exaction in favour of the plaintiff a sum of monetary resources due to him on loan agreement was executed only in part, the defendant does not voluntarily pay the debt, and paying off remaining debt amounting to more than 1 million rubles by levying execution upon other property owned by her is impossible in view of absence of it, the court proceeded

from the fact that for the defendant the indicated housing was the only one suitable for permanent residence and that her share was 20,25 m², i.e. exceeded social norm only on 2,25 m².

By ruling of a judge of Moscow City Court of 23 January 2009 and ruling of a judge of the Supreme Court of the Russian Federation of 13 August 2009 it was refused to transfer supervisory complaints of Yu.A.Shikunov for consideration in court session of supervisory instance.

1.2. By virtue of 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, reviewing on complaints of citizens constitutionality of the legislative provisions applied in a concrete case, the consideration of which has been completed in court, which affect constitutional rights and freedoms to violation of which the petitioner refers, passes the decision only on the subject indicated in the complaint and in respect of the part of an act, the constitutionality of which is called in question, assessing both the literal meaning of the legislative provisions under consideration and the meaning attributed to it by an official and other interpretation or the prevailing law-applying practices, as well as proceeding from their place in the system of norms, being not constrained by grounds and arguments expounded in the complaint while passing decision.

Violation of their rights, guaranteed by Articles 15 (Sections 1 and 4), 17 (Section 3), 19 (Sections 1 and 2), 35 (Sections 1 and 3), 45, 46 (Section 1), 55 (Sections 2 and 3) and 123 (Section 3), by Paragraph 2 of Section 1 of Article 446 of the Civil Procedure Code of the Russian Federation, the petitioners perceive in the presumption that it does not ensure appropriate and rigorous execution of a court decision on exaction of a debt, having entered into legal force, in a situation when a citizen-debtor does not have any other, apart from housing belonging to him on the right of ownership, property, at the expense of which the demands of a creditor could be complied with, because it does not allow to levy execution by executive documents upon such a housing (its parts), if it is for the debtor and persons being at his/her expense the only one suitable for permanent residence,

irrespective of general quantitative and qualitative characteristics of concrete housing, its actual utilization and irrespective of the fact that its part which, after satisfaction of the creditor's demands, could have remained in the debtor's ownership, would in its square be not lower than sanitary norms and would allow him and the persons being at his/her expense the necessary level of existence.

Accordingly, Paragraph 2 of Section 1 of Article 446 of the Civil Procedure Code of the Russian Federation is a subject-matter of consideration by the Constitutional Court of the Russian Federation in the present case in the part in which it establishes as a general rule a ban to levy execution by executive documents upon housing (its parts), belonging to a citizen-debtor on the right of ownership, if this housing is for a citizen-debtor and members of his/her family living together in this housing the only one suitable for permanent residence.

2. The Constitution of the Russian Federation, declaring the recognition, observance and protection of human and civil rights and freedoms an obligation of the State (Article 2), guarantees to everyone the freedom of economic activity, the right to have property and to possess, use and dispose of it both individually and jointly with other persons, protection of these rights and freedoms, including protection in court (Article 8; Article 19, Sections 1 and 2; Article 35, Sections 1 and 2; Article 45, Section 1; Article 46, Section 1).

2.1. Turning to the issue of realization by the State, in the person of the federal legislator, of the fundamental obligation fixed in Article 2 of the Constitution of the Russian Federation in the course of regulating property relations, the Constitutional Court of the Russian Federation has come to the following conclusions.

Within the meaning of Articles 8 (Section 2), 35 (Section 1), 45 (Section 1), 71 (Items "б", "д", "о") and 76 (Section 1) of the Constitution of the Russian Federation, the right of ownership, including grounds and procedure of its acquisition, transition and loss, as well as the volume and boundaries of competencies to possess, use and dispose of property, are regulated by a federal law. The content of this regulation, as it follows from Articles 1, 2, 15 (Section 4),

17 (Sections 1 and 2), 18, 19, 34 (Section 1) and 35 (Sections 2 and 3) of the Constitution of the Russian Federation, can not be determined by the federal legislator arbitrarily: property relations in the Russian Federation must be regulated in accordance with the principles of the law-governed State, on the basis of juridical equality and justice and proceeding from the idea that the right of ownership, as well as all other human and civil rights and freedoms, is recognized and guaranteed in the Russian Federation according to universally recognized norms and principles of international law and in accordance with the Constitution of the Russian Federation.

The right of ownership and other property rights, by virtue of Articles 7, 15 (Section 2), 17 (Section 3), 19 (Sections 1 and 2), 46 and 55 (Sections 1 and 3) of the Constitution of the Russian Federation and proceeding from general legal principle of justice, are subject to protection on the basis of commensurateness and proportionality in order to secure balance of rights and lawful interests of all participants of the civil turnover – proprietors, creditors, debtors; possible restrictions of the rights to possess, use and dispose of property, freedom of entrepreneurial activity and freedom of agreements by federal law must also meet the requirements of justice, be adequate, proportionate, commensurate, have general and abstract character, have no retroactive force and not touch the substance of these constitutional rights, i.e. not restrict the limits and application of corresponding constitutional provisions; the possibility of restrictions itself and their character must be determined by the need to protect constitutionally-significant values, including decent life and free development of a human being, securing of which constitutes an obligation of the State, as well as the right of everyone to a home (Article 7; Article 40; Article 56, Section 3, of the Constitution of the Russian Federation).

Universally recognized principles of inviolability of ownership and freedom of agreement, contemplating equality, autonomy of will and property independence of participants of the civil-law relations, inadmissibility of arbitrary intervention of anyone into private matters, expressed in the Constitution of the Russian

Federation, condition the freedom of possession, use and disposal of property, including the possibility to alienate one's property to the ownership of other persons, hand over to them the rights to possess, use and dispose of property, remaining the owner, and at the same time – the need to correlate the right of ownership belonging to the person with rights and freedoms of other persons. This means, in particular, that the owner is entitled to commit any actions in respect of his/her property on his/her own discretion, if they do not contradict the law and other legal acts and do not violate rights and lawful interests of other persons; accordingly, the possibility of execution by an owner of his/her civil-law obligations at the expense of property belonging to him/her, including the one pertaining to real estate objects, is contemplated.

The adduced legal positions of the Constitutional Court of the Russian Federation, expounded in its decisions (judgments of 12 July 1999 No. 12-II, of 6 June 2000 No. 9-II, of 22 November 2000 No. 14-II, of 12 July 2007 No. 10-II, of 20 December 2010 No. 22-II, of 22 April 2011 No. 5-II; rulings of 4 December 2003 No. 456-O, of 17 January 2012 No. 10-O-O and others), are fully extended to the relations which tie up a creditor with a citizen-debtor, having not fulfilled his/her civil-law obligation and by virtue of this answering before the creditor with the property owned by him, including possibility of levying execution upon property pertaining to objects of real estate within the framework of executive proceedings in cases envisaged by law.

2.2. As the Constitutional Court of the Russian Federation repeatedly pointed out, execution of a court decision, including the one passed in favour of a creditor in case of breach of a civil-law obligation by a debtor, should be regarded as an element of court protection within the meaning of Article 46 (Section 1) of the Constitution of the Russian Federation, guaranteeing to everyone protection of his/her rights and freedoms in court; accordingly, the protection of violated rights can not be recognized as efficacious, if a court act or an act of another authorized body is not opportunely executed, which obliges federal legislator, when choosing within the framework of its constitutional discretion some or other mechanism of

executive proceedings, to exercise non-contradictory legal regulation of the relations in this field and not call in question the constitutional principle of feasibility of a court decision (judgments of 30 July 2001 No. 13-II, of 15 January 2002 No. 1-II, of 14 May 2003 No. 8-II, of 14 July 2005 No. 8-II, of 12 July 2007 No. 10-II and of 26 February 2010 No. 4-II).

These requirements conform to Article 2 of the International Covenant on Civil and Political Rights, obliging States to ensure to any person whose rights and freedoms have been violated effective means of legal protection, as well as to Paragraph 1 of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms in its interpretation by the European Court of Human Rights, supposing that execution of a decision passed by any court must be regarded as an integral part of the “trial” in the sense of this Article and that the right of everyone to court protection would become illusory if the legal system allowed that final, obligatory court decision remained inactive to the damage of one of the parties (judgments of 19 March 1997 on the case “Hornsby vs Greece”, of 7 May 2002 on the case “Burdov vs Russia”, of 27 May 2004 on the case “Metaxas vs Greece”, of 29 March 2006 on the case “Mostacciuolo vs Italy (No. 2)”, of 15 February 2007 on the case “Railyan vs Russia” and others).

Since, by virtue of Article 17 (Section 3) of the Constitution of the Russian Federation, realization of human and civil rights and freedoms has as its objective limit hindrance to the realization of rights and freedoms of other persons, causing damage to their constitutionally guaranteed interests, the federal legislator, creating conditions ensuring equal court protection of the rights of a creditor (extractor) and a debtor (defendant), must proceed from the presumption that arising collisions of their lawful can in no case be overcome by granting protection to some rights in violation of the others, equally valuable in their constitutional significance.

In such cases rights and lawful interests of the participants of the civil turnover must receive commensurate (proportionate) protection on the basis of balance of constitutional values. As applied to the normative legal regulation of court’s resolution of the collisions of interests of creditors and debtors, this means

that the limits of possible exaction by executive documents, established by the federal legislator, must answer the interests of protection of the constitutional rights of the citizen-creditor, but they can not affect the main content of constitutional rights of the citizen-debtor, the essence of which must not be lost in any circumstances.

2.3. Property, being a material basis and economic expression of freedom of the society and the person, is not only a necessary condition of free exercise of entrepreneurial and other economic activity not prohibited by law, but also guarantees both realization of other human and civil rights and freedoms and fulfillment of obligations determined by it, and the right of private property as an element of the constitutional status of a person shall determine, equally with other directly acting human and civil rights and freedoms, the meaning, content and implementation of laws, the functioning of legislative and executive authority, of local self-government and shall be guaranteed by law (Article 18 of the Constitution of the Russian Federation).

Accordingly, the federal legislator is called upon to secure legal certainty, stability and predictability in the sphere of civil turnover, maintaining the highest possible level of mutual confidence among the subjects of economic activity and creating all necessary conditions for effective protection of the right of ownership and other property rights. At the same time, it must proceed from the constitutional obligation of the Russian Federation as a social State to care about the well-being of its citizens, preserving conditions for their normal existence, as well as from the constitutional fundamentals of legal status of person, in particular from the requirement of Article 17 (Section 3) of the Constitution of the Russian Federation, according to which exercise of human and civil rights and freedoms must not infringe upon rights and freedoms of other persons, in the given case – the rights of the obliged person (debtor), when within the framework of the executive proceedings the need arises to levy execution upon property, belonging to the citizen-debtor on the right of ownership, in order not to decrease person's dignity and not to violate socio-economic rights of citizens (Article 7, Section 1; Article

21, Section 1, of the Constitution of the Russian Federation, Article 25 of the Universal Declaration of Human Rights).

The indicated constitutional elements of inter-relations of a person, society and the State are also extended to relations connected with the realization of the rights to a home guaranteed to everyone by Article 40 (Section 1) of the Constitution of the Russian Federation, which has received international-law recognition as one of the necessary conditions of securing the right to adequate standard of living (Article 25 of the Universal Declaration of Human Rights, Article 11 of the International Covenant on Economic, Social and Cultural Rights).

The rights of everyone to a home as it is fixed by the Constitution of the Russian Federation and provided for by norms of international law, leans on the principle expressed in the prescriptions of Articles 2, 17-19 and 21 of the Constitution of the Russian Federation, by virtue of which a human being is the highest value and nothing may serve as ground for decrease of his/her dignity as a subject of civil society whose rights and freedoms in whole fullness are under the protection of the Constitution of the Russian Federation and, consequently, the attitude to him/her as to merely an object of external impact is excluded.

The European Court of Human Rights in its precedent practice proceeds from the notion that, although in the Convention for the Protection of Human Rights and Fundamental Freedoms the definition of the right to be provided with housing is absent, it would be none the less undoubtedly desirable that everyone had a place where he/she could live with dignity and which he/she could call home (judgments of 18 January 2001 on cases “Lee vs the United Kingdom”, “Beard vs the United Kingdom” and “Jane Smith vs the United Kingdom”).

Thus, the right of ownership on a housing being for a citizen and members of his/her family the only one suitable for permanent residence can not be regarded as exclusively economic right, because fulfils a socially-significant function and secures for a citizen the realization of a number of basic rights and freedoms, guaranteed by the Constitution of the Russian Federation.

3. The Constitution of the Russian Federation, defining concern of the State for social security of its citizens as one of the aims of social policy of the Russian Federation, fixing right of everyone to a home and contemplating, first of all, responsible attitude of the citizens themselves to its realization, at the same time places on the bodies of public authority the obligation to provide necessary conditions for it, including by way of adopting special acts by the federal legislator within the framework of powers vested in him, which would determine the procedure of granting housing and on the base of which individual cases would be resolved; when regulating rights to housing, including during transition of ownership of a housing, observance of balance of rights and lawful interests of all participants of these relations, including family members of the owner of a housing, is necessary, the guarantees of their rights being considered as receiving protection along with the constitutional right of property, as well as securing the possibility of differentiated approach to the assessment of the arising life situations in order to avoid unfounded restriction of constitutional rights and freedoms (judgments of the Constitutional Court of the Russian Federation of 21 April 2003 No. 6-II, of 8 June 2010 No. 13-II and of 27 February 2012 No. 3-II, rulings of the Constitutional Court of the Russian Federation of 17 October 2006 No. 485-O, of 3 November 2006 No. 455-O and of 5 March 2009 No. 376-O-II).

Carrying out respective legal regulation with regard to concrete historical conditions of functioning of the Russian legal system, the federal legislator has certain discretion in choosing measures aimed at securing conscientious fulfillment by citizens of their civil-law obligations and their responsibility before the creditors, including by all their property. But these measures, within the framework of realization of court protection of property interests of persons, connected by the relations “debtor-creditor”, must not infringe upon just balance between values expressed in recognition and guaranteeing of the right of private property and in the general legal principle of conscientious fulfillment of obligations, on the one hand, and the right to a home, on the other.

Accordingly, the federal legislator, when establishing the mechanism of executive proceedings and following the principles of law-governed, social State, called upon to create conditions for decent life and free development of a human being, is entitled to determine the limits of the levy of execution by executive documents upon housing owned by citizens-debtors in order to secure their rights in the housing field on the level allowing to realize natural need for housing as a necessary means of life-maintenance. Herewith the legislator is bound by the requirement to guarantee to the citizen-debtor the right to a home as it is fixed by Article 40 of the Constitution of the Russian Federation, and therefore, securing satisfaction of property interests of the creditor (executor), must preserve the very essence of this constitutional right.

3.1. According to Article 24 of the Civil Code of the Russian Federation, a citizen answers on his/her obligations by all the property owned by him/her, with the exception of property upon which the execution may not be levied and the list of which is set by the civil procedure legislation. This norm is in a systematic connection with Section 4 of Article 69 and Section 1 of Article 79 of the Federal Law of 2 October 2007 No. 229-ФЗ “On Executive Proceedings”, envisaging, within the framework of general procedure of the levy of execution upon the debtor’s property, a rule according to which in case of absence or insufficiency of monetary resources on the citizen-debtor the execution is levied upon other property owned by him/her, with the exception of property, upon which the execution may not be levied and the list of which is set by the Civil Procedure Code of the Russian Federation, namely by its Article 446.

This legal regulation, forbidding to levy execution by executive documents upon certain kinds of property by virtue of its purposeful destination, qualities and signs, characterizing the subject in whose ownership it stays, is determined by the strive of the federal legislator to preserve for the citizen-debtor and persons at his/her expense conditions necessary for decent existence by way of granting him/her property (executor’s) immunity.

3.2. The question of the limits of operation of property (executive) immunity the in case of the levy of execution by executive documents upon objects of real estate belonging to a citizen-debtor on the right of ownership, including housing, has already been broached by the Constitutional Court of the Russian Federation.

In the Ruling of 4 December 2003 No. 456-O the Constitutional Court of the Russian Federation came to the conclusion that the provisions of Section 1 of Article 446 of the Civil Procedure Code of the Russian Federation, prohibiting to levy execution not upon any housing owned by a citizen-debtor, but upon the one which is for him/her the only one suitable for permanent residence, are aimed at protection of the right to a home of not only the debtor him/herself, but also members of his/her family, including minors, aged and invalids at his/her expense, as well as at securing the protection of person's dignity by the State as is required by Article 21 (Section 1) of the Constitution of the Russian Federation, conditions of normal existence and guarantees of socio-economic rights in accordance with Article 25 of the Universal Declaration of Human Rights; having envisaged the limits of the levy of execution by executive documents upon housing owned by a citizen-debtor on the right of ownership and having thus restricted the creditor's right to appropriate execution of a court decision passed in his/her favour, the federal legislator did not go beyond the framework of admissible restrictions of constitutional right to court protection established by Article 55 (Section 3) of the Constitution of the Russian Federation which, however, does not exclude the possibility to render this regulation concrete in the part concerning the dimensions of such housing.

Analogous conclusions are contained in the rulings of the Constitutional Court of the Russian Federation of 20 October 2005 No. 382-O, of 24 November 2005 No. 492-O, of 19 April 2007 No. 241-O-O, of 20 November 2008 No. 956-O-O, of 1 December 2009 No. 1490-O-O and of 22 March 2011 No. 313-O-O. The legal positions expounded in these rulings, in essence, have underlain the interpretation of Paragraph 2 of Section 1 of Article 446 of the Civil Procedure

Code of the Russian Federation given by courts in the decisions on F.Kh.Gumerova's case.

Developing the adduced legal positions, the Constitutional Court of the Russian Federation indicated in the Ruling of 17 January 2012 No. 10-O-O that the provision of Paragraph 2 of Section 1 of Article 446 of the Civil Procedure Code of the Russian Federation establishing ban on the levy of execution upon housing, if for the citizen-debtor and his family members it is the only one suitable for permanent residence, in the inter-connection with Article 24 of the Civil Code of the Russian Federation grants the citizen-debtor property (executor's) immunity in order, proceeding from general destination of this legal institution, to guarantee the indicated persons conditions necessary for their normal existence; such regulation appears as procedural guarantee of socio-economic rights of these persons in the field of housing legal relations, it is carried out by the federal legislator within the framework of discretionary powers granted to him and in itself can not be regarded as excessive restriction of creditor's rights contradicting the requirements of Article 55 (Section 3) of the Constitution of the Russian Federation.

Reviewing constitutionality of the provision of Paragraph 3 of Section 1 of Article 446 of the Civil Procedure Code of the Russian Federation, establishing ban on the levy of execution by executive documents upon plots belonging to a citizen-debtor on the right of ownership, the use of which is not connected with exercising entrepreneurial activity by him/her, the Constitutional Court of the Russian Federation in the Judgment of 12 July 2007 No. 10-II confirmed once more that property (executor's) immunity appears as a procedural guarantee of realization of socio-economic rights of the citizen-debtor and persons at his/her expense and is called upon to secure for them conditions necessary for normal existence and activity, including professional. At the same time, the Constitutional Court of the Russian Federation came to the conclusion that when determining the limits of operation of property (executor's) immunity as applied to plots not used with entrepreneurial purposes, the federal legislator, with regard to the requirement to observe balance of interests of the debtor and the creditor (exactor), following

from Article 17 (Section 3) of the Constitution of the Russian Federation, must take into consideration not only that the person (debtor) has no status of individual entrepreneur, but also general quantitative and qualitative characteristics, purposeful destination and actual use of plots, to which the special legal regime can be extended, contemplating release from exaction; accordingly, since restriction of debtor's rights is linked first of all to securing compulsory protection of property rights of the exactor violated by him/her, the federal legislator must try in such cases to preserve for the citizen-debtor and persons at his/her expense the necessary level of existence.

Proceeding from this, the Constitutional Court of the Russian Federation has recognized the provision of Paragraph 3 of Section 1 of Article 446 of the Civil Procedure Code of the Russian Federation – in the part in which it establishes ban on the levy of execution by executive documents upon plots belonging to a citizen-debtor on the right of ownership, the use of which is not connected of exercising entrepreneurial activity by him/her and which are not a basic source of existence of a citizen-debtor and persons at his/her expense, securing necessary level of existence to the indicated persons, – as excessive, non-proportionate to constitutionally-significant goals arbitrary restriction of both the property rights of the creditor and of the possibility of their appropriate court protection guaranteed by the Constitution of the Russian Federation, and therefore not conforming to the Constitution of the Russian Federation, its Articles 17 (Section 3), 35 (Section 1), 45, 46 (Section 1) and 55 (Section 3).

Turning to the inter-connected provisions of Paragraph 2 of Section 1 of Article 446 of the Civil Procedure Code of the Russian Federation and the Federal Law of 16 July 1998 No. 102-ФЗ “On Mortgage (Deposit of Real Estate)”, envisaging exceptions from property (executor's) immunity in respect of property being a subject of mortgage, the Constitutional Court of the Russian Federation came to the conclusion that these provisions in the system of actual legal regulation do not contain uncertainty, are aimed at securing the balance of rights and lawful interests of exactors and debtors and as such serve the realization of the

prescriptions of Articles 17 (Section 3), 35 and 46 (Section 1) of the Constitution of the Russian Federation (rulings of 16 December 2010 No. 1589-O-O, of 17 January 2012 No. 12-O-O and No. 13-O-O). Herewith the Constitutional Court of the Russian Federation referred to the legal position formulated by it in the Judgment of 12 July 2007 No. 10-II, according to which the legislative regulation of the levy of execution by executive documents must be carried out on a stable legal ground of balanced regulation of rights and lawful interests of all the participants of executive proceedings with legislative establishment of the limits of possible exaction, not touching the basic content of the debtor's rights and at the same time answering the interests of the protection of the creditor's rights (enclosing his/her chose in action) in order to prevent or decrease the amount of negative consequences of non-fulfillment of obligations by the debtor.

3.3. The decisions of the Constitutional Court of the Russian Federation, in which the adduced legal positions are expounded, retain their force. Taking them into account in the present case when assessing constitutionality of Paragraph 2 of Section 1 of Article 446 of the Civil Procedure Code of the Russian Federation in the part establishing as a general rule ban on the levy of execution by executive documents upon housing (its parts) belonging to a citizen-debtor on the right of ownership and being for him/her and his/her family members living together with him/her the only one suitable for permanent residence, the Constitutional Court of the Russian Federation proceeds from the following.

The legal position which underlay the recognition of Paragraph 3 of Section 1 of Article 446 of the Civil Procedure Code of the Russian Federation as non-conforming to the Constitution of the Russian Federation by the Constitutional Court of the Russian Federation, was formulated in the Judgment of 12 July 2007 No. 10-II exclusively with regard to relations concerning the levy of execution upon plots belonging to a citizen-debtor on the right of ownership, the use of which is not linked to carrying out entrepreneurial activity, and thus can not be extended to relations regulated by the provisions of Paragraph 3 of Section 1 of Article 446 of the Civil Procedure Code of the Russian Federation related to the levy of

execution upon such a specific property object as the only one suitable for permanent residence housing belonging to a citizen-debtor on the right of ownership, and therefore, can not serve as a basis for recognition of this provision as non-conforming to the Constitution of the Russian Federation.

Legal positions on purposeful destination of the property (executor's) immunity and on the need to observe the principle of proportionality when securing protection of rights and lawful interests of participants of the executive proceedings allowed the Constitutional Court of the Russian Federation to come to the conclusion that the federal legislator is not deprived of the opportunity to render the provision of Paragraph 3 of Section 1 of Article 446 of the Civil Procedure Code of the Russian Federation more concrete in the part concerning the dimensions of a housing, upon which the execution by executive documents may be levied, i.e. this legislative provision needs correction, because in the law-applying practices which proceeds from its literal interpretation the appropriate balance of lawful interests of the creditor (exactor) and the citizen-debtor can not be secured in all life situations.

Thus, the provision of Paragraph 3 of Section 1 of Article 446 of the Civil Procedure Code of the Russian Federation, establishing property (executor's) immunity with respect to housing (its parts) belonging to a citizen-debtor on the right of ownership, which is for the citizen-debtor and his/her family members living together in this housing the only one suitable for permanent residence, since it is aimed at protection of the constitutional right to a home not only for the citizen-debtor, but also for members of his/her family, including minors, aged and invalids at his/her expense, as well as at securing for these persons normal conditions of existence and guarantees of their socio-economic rights and in the end at realization of the State's obligation to protect personal dignity, has constitutional grounds and in itself may not be regarded as infringing upon constitutional values, while the respective property (executor's) immunity, in order to secure constitutional principle of proportionality in the field of protection of rights and lawful interests of the creditor (exactor) and the citizen-debtor as

participants of the executive proceedings must be extended to housing which by its objective characteristics (parameters) is reasonably sufficient for satisfaction of constitutionally significant needs for housing as a necessary means of life maintenance.

4. The provision of Paragraph 3 of Section 1 of Article 446 of the Civil Procedure Code of the Russian Federation can not be interpreted and applied without consideration of constitutional law nature of property (executor's) immunity in respect of housing intended not for preserving after the citizen-debtor a housing belonging to him/her on the right of ownership in any case, but for guaranteeing to the citizen-debtor and members of his/her family the level of housing provision necessary for normal existence without violation of the very essence of the right to a home and disparagement of human dignity.

Accordingly, the ban on the levy of execution upon housing (its parts) which is the only one suitable for permanent residence of the indicated persons – proceeding from the understanding that this housing is enough for satisfaction of the reasonable human need of housing, the right to which must be guaranteed to a citizen-debtor and his/her family members in any case (even to the detriment of constitutionally-significant goal of execution of court decisions), – is constitutionally justified to the extent to which it is aimed at preservation for these persons of living conditions which are recognized as acceptable in a concrete socio-economic situation at a particular stage of development of the society and the State.

Meanwhile, the provision of Paragraph 2 of Section 1 of Article 446 of the Civil Procedure Code of the Russian Federation contains no guiding line for determination of the level of provision with housing as reasonably sufficient, which at present, in the conditions of developing market of housing and changes in the structure of the housing fund can lead to a disproportionate and supported by no constitutionally significant goal restriction of the rights of the creditors in their property relations with the citizens-debtors and, consequently, break the balance of constitutionally protected interests.

Absence of respective guiding lines and, consequently, the possibility of differentiated approach when applying property (executor's) immunity in respect of housing, belonging to a citizen-debtor on the right of ownership and being for him/her and members of his/her family the only one suitable for permanent residence, does not allow to levy execution by executive documents upon such housing, whose dimensions may significantly exceed medium indices and the price may be sufficient for satisfaction of property claims of the exactor without damage for the essence of the constitutional right to a home of the citizen-debtor and his/her family members.

Extension of unconditional property (executor's) immunity to such housings would mean not so much a striving for protection of the constitutional right to a home of the citizen-debtor and his/her family members, as observance of exclusively property interests of the debtor to the detriment of the interests of the exactor, and consequently breach of the balance of interests of the debtor and the creditor (exactor) as participants of executive proceedings in spite of the requirements following from Articles 8 (Section 1), 34 (Section 1), 35 (Section 1) and 40 (Section 1) of the Constitution of the Russian Federation in the inter-connection with its Articles 17 (Section 3), 19 (Sections 1 and 2), 46 (Section 1) and 55 (Section 3).

Since guaranteeing to citizens of the level of provision with housing necessary for normal existence lies in the basis of legislative definition of purpose which pre-determines regulation of property (executor's) immunity with respect to housing, the provision of Paragraph 2 of Section 1 of Article 446 of the Civil Procedure Code of the Russian Federation can not be regarded as not allowing deterioration of living conditions of a citizen-debtor and members of his/her family on the sole ground that housing belonging to the citizen-debtor on the right of ownership, irrespective of its quantitative and qualitative characteristics, including those of the cost, is for the indicated persons the only one suitable for permanent residence.

Consequently, the priority of property interests of a citizen-debtor, in whose ownership there is a housing, allowing by its characteristics to satisfy the claims of a creditor (exactor) connected with appropriate execution of a court decision having entered into legal force, without damage to normal existence of the citizen-debtor him/herself and members of his/her family and realization of their socio-economic rights, would have been an unfounded and disproportionate restriction of the rights of a creditor (exactor). In this connection, the Constitutional Court of the Russian Federation repeatedly drew attention of the federal legislator to the possibility of rendering concrete the provision of Paragraph 2 of Section 1 of Article 446 of the Civil Procedure Code of the Russian Federation in the part concerning the dimensions of the housing upon which the execution by executive documents may be levied, with the aim of full observance of the balance of interests of the exactor and the debtor in the executive proceedings (rulings of 4 December 2003 No. 456-O, of 19 April 2007 No. 241-O-O, of 20 November 2008 No. 956-O-O and others), but until now corresponding amendments to the civil procedure legislation have not been made.

In the present case the Constitutional Court of the Russian Federation, obliged when executing powers vested in it to proceed among other factors from inadmissibility of exercising human and civil rights and freedoms in violation of rights and freedoms of other persons, on the one hand, and from stability of legal relations in the interests of their participants, on the other, can not but take into consideration that in the conditions in which the question of what dimension of housing at the present stage of social development may be considered as meeting the requirements of provision of reasonable human need of housing and, accordingly, upon what housing being the only one suitable for permanent residence of a citizen-debtor and his/her family members the execution by executive documents may be levied has not been resolved by the federal legislator, recognition of Paragraph 2 of Section 1 of Article 446 of the Civil Procedure Code of the Russian Federation as not conforming to the Constitution of the Russian Federation would entail the risk of polysemantic and, consequently, arbitrary

choice of respective criteria by the law-applicator, and in relations characterized by high degree of social vulnerability of people, given the fact that norms existing in the sphere of housing have another purposeful destination and can not be used.

Proceeding from the principle of reasonable restraint and guided by Item 12 of Section 1 of Article 75, Section 1 of Article 87 and Article 100 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation” the Constitutional Court of the Russian Federation in the present case considers it possible to refrain from recognition of the provision of Paragraph 2 of Section 1 of Article 446 of the Civil Procedure Code of the Russian Federation as not conforming to the Constitution of the Russian Federation.

This does not remove from the federal legislator the duty, proceeding from the Constitution of the Russian Federation and with regard to the legal positions expounded in the present Judgment, with the aim to secure constitutional balance of the interests of a creditor (executor) and a citizen-debtor in the executive proceedings, to make necessary amendments to the civil procedure legislation, regulating the limits of operation of property (executor’s) immunity as applied to a housing (its parts), if for the citizen-debtor and his/her family members living together in the housing belonging to them it is the only one suitable for permanent residence, in order to secure satisfaction of property interests of the creditor (executor) in a case when respective object of real estate by its qualities obviously exceeds the level sufficient for provision of reasonable need of the citizen-debtor and his/her family members of housing, as well as envisage for such persons guarantees of preservation of living conditions necessary for normal existence.

Apart from the criteria which would allow to define a housing as obviously exceeding by its qualities an indicated level (general and living space of a housing, its constructive peculiarities, market cost etc.), the federal legislator must envisage the procedure of the levy of execution upon it, requiring revelation of whether this housing is the only one suitable for residence of the owner and members of his/her family and guaranteeing them satisfaction of the reasonable need of housing, as

well as to elaborate for the aim of this regulation the list of persons falling under the notion “family members living together with a citizen-debtor”.

In this case the levy of execution upon this housing, if it is for these persons the only one suitable for permanent residence, must be carried out on the basis of a court decision and only in the case if a court establishes not only a formal accordance of a housing with criteria allowing to overcome in its respect the property (executor’s) immunity, but also disproportion of income of the citizen-debtor and his/her obligations before the creditor (exactor) and absence of another property on him/her, upon which the execution may be levied. Other, especially in cases of insignificant exceeding of the norms envisaged by law, entails the risk of violation of the rights of citizen-debtor and his/her family members and thus breach of the balance of constitutionally-significant values, protection of which this legal institution is aimed at.

5. According to Article 6 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation” the decisions of the Constitutional Court of the Russian Federation shall be obligatory throughout the territory of the Russian Federation for all representative, executive, and judicial bodies of State power, bodies of local government, enterprises, agencies, organizations, officials, citizens and their associations.

Within the meaning of the abovementioned Federal Constitutional Law, all decisions of the Constitutional Court of the Russian Federation which, by virtue of Section 2 of its Article 79, shall be directly applicable and shall require no affirmation by other bodies and officials, possess general binding character. As it follows from Section 4 of the same Article, should a normative act be found unconstitutional in its entirety or partially by a decision of the Constitutional Court of the Russian Federation, or should a need to eliminate a lacunae in legal regulation proceed from a decision of the Constitutional Court of the Russian Federation, a State body or an official that has adopted that normative act shall consider adopting a new normative act that should, in particular, provide for an abrogation of a normative act found unconstitutional in its entirety or an

introduction of necessary amendments to a normative act found partially unconstitutional.

The adduced prescriptions of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation” in their inter-connection are extended also to cases when, assessing constitutionality of a normative act, the Constitutional Court of the Russian Federation have revealed in it certain defects of constitutional law nature, able in certain situations to serve as a pre-requisite for breach of constitutionally-significant values, including human and civil rights and freedoms, but, guided by the principle of reasonable restraint, has not recognized them as sufficient ground for a conclusion about non-conformity of the considered normative act to the Constitution of the Russian Federation and deemed it necessary to address to the legislator with a commission to eliminate indicated defects.

So far as the possibility to formulate in its decisions commissions of this kind is pre-determined by the constitutional law status of the Constitutional Court of the Russian Federation as a judicial body of constitutional review, called upon to secure, within the framework of powers vested in it, effective and balanced functioning and development of the legal system of the Russian Federation in accordance with the Constitution of the Russian Federation, the legislator has no right to leave without attention the decisions of the Constitutional Court of the Russian Federation containing commissions addressed to it.

Concluding from the above and pursuant to Article 6, 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 provision of Paragraph 2 of Section 1 of Article 446 of the Civil Procedure Code of the Russian Federation, establishing property (executor’s) immunity in respect of housing (its parts) belonging to a citizen-debtor on the right of ownership and which is for the citizen-debtor and his/her family

members living together in this housing the only one suitable for permanent residence, as not contradicting the Constitution of the Russian Federation, since this legislative provision is aimed at protection of the constitutional right to a home not of the citizen-debtor only, but also of his/her family members, as well as at provision for indicated persons of normal conditions of existence and guarantees of their socio-economic rights and, in the end, at realization of the State's obligation to protect human dignity.

2. Property (executor's) immunity established by the provision of Paragraph 2 of Section 1 of Article 446 of the Civil Procedure Code of the Russian Federation in respect of housing (its parts) belonging to a citizen-debtor on the right of ownership, with the aim of realization of the constitutional principle of proportionality when providing protection of rights and lawful interests of a creditor (executor) and a citizen-debtor as participants of executive proceedings, must be extended to housing which by its objective characteristics (parameters) is reasonably sufficient for satisfaction of constitutionally-significant need of housing as a necessary means of life maintenance.

Proceeding from the aims indicated above, the federal legislator must, in accordance with the requirements of the Constitution of the Russian Federation and with regard to the legal positions expressed in the present Judgment, introduce necessary amendments into the civil procedure legislation regulating the limits of operation of property (executor's) immunity as applied to housing (its parts), if for the citizen-debtor and his/her family members living together in this housing it is the only one suitable for permanent residence, in order to secure the possibility of satisfaction of property interests of a creditor (executor) in a case when respective object of real estate by its qualities obviously exceeds the level sufficient for satisfaction of the reasonable need of the citizen-debtor and his/her family members of housing, as well as envisage for such persons guarantees of preservation of living conditions necessary for normal existence.

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. 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. 11-II