

By the Judgment of 7 March 2017 No. 5-II/2017 the Constitutional Court gave appraisal of constitutionality of Item 1 of Section 3 of Article 81 and Article 401⁶ of the Criminal Procedure Code of the Russian Federation

The subject-matter of consideration were:

Item 1 of Section 3 of Article 81 of the Criminal Procedure Code of the Russian Federation – insofar as on its basis is resolved the question of confiscation of property belonging to a person, in whose respect criminal case has been discontinued due to expiry of the period of limitation of criminal persecution, and as an instrument of a crime or another means of its commission recognised as an exhibit in this criminal case;

Article 401⁶ of this Code – insofar as on its basis is resolved the question of admissibility of reconsideration in cassation procedure of a court decision on the return of the said property to a person, in whose respect criminal case has been discontinued, beyond the time limits exceeding one year from the day of entry of such court decision into legal force.

The Constitutional Court has recognised the contested provisions of Article 81 of the Criminal Procedure Code of the Russian Federation as not contradicting the Constitution of the Russian Federation, so far as they contemplate that deprivation of an accused (defendant), in whose respect the question is being decided on discontinuance of the criminal case due to expiry of the period of limitation of criminal persecution, of property belonging to him on lawful grounds and as an instrument of a crime or another means of its commission recognised as an exhibit and, accordingly, discontinuance of the right of the accused (defendant) to this property may be carried out in the absence of objections of the accused (defendant) against discontinuance of the criminal case on this ground and provided that legal sequels of such discontinuance, including confiscation, are explained to him. If such consent has not been received from him, discontinuance of the right of such person to the said property is carried out in passing inculpatory sentence with release of the convicted person from punishment.

Article 401⁶ of the Criminal Procedure Code of the Russian Federation has also been recognised as not contradicting the Constitution of the Russian Federation, since it contemplates no reconsideration (repeal or alteration) in cassation procedure of a court decision having entered into legal force, according to which the said property is not subject to confiscation, on expiry of one year from the day of entry of such court decision into legal force.