

By its Judgement of 8 December 2022 No.53-II the Constitutional Court of the Russian Federation assessed constitutionality of a Note 1 to Article 158 of the Criminal Code of the Russian Federation.

This provision has been the subject of consideration insofar as it serves as the basis for deciding whether the amount of personal income tax withheld and remitted to the budget by the tax agent from the relevant part of the salary is to be taken into account in determining the amount of larceny committed by deception about the existence of grounds for accruing or increasing wages.

The challenged provision was found to be inconsistent with the Constitution of the Russian Federation to the extent that, due to its uncertainty, it allows in law enforcement practice different assessment of the amount of stolen goods in these larcenies, with respect to the attribution or non-attribution to this amount of tax withheld and paid by the tax agent from the part of the salary accrued under the influence of deception.

Until changes in the legal regulation of liability for the said larceny are made, the amount of personal income tax, which was calculated and withheld by the tax agent, is not subject to inclusion in its amount.

The Constitutional Court separately noted that recognition of the challenged provision as inconsistent with the Constitution of the Russian Federation entails a review of sentences in which it was the inclusion in the amount of stolen personal income tax, which was calculated and withheld by the tax agent from the relevant part of the salary for transfer to the budget, that influenced the qualification of the offence.