

By the Judgement of 16 May 2023 No. 23-II the Constitutional Court assessed constitutionality of Article 250, item 1 of the Civil Code of the Russian Federation

The above-mentioned provisions were considered insofar as they served as a basis for resolving the issue of allowing a citizen who is a participant in a common shared ownership to exercise a pre-emptive right to purchase a share in the ownership of residential premises and the land on which they are located, in the event that they are sold to an unrelated person at a public auction within the framework of bankruptcy proceedings of a citizen.

The Constitutional Court found that the contested provisions were inconsistent with the Constitution of the Russian Federation insofar as, under the current system of legal regulation and taking into account the law enforcement practice, they were uncertain as to the possibility and procedure for such citizens to exercise their preemptive right to acquire a share in the ownership of residential premises and the land on which they are located in the specific case.

Until the necessary legislative amendments are made, the auction of a share in the shared ownership of a residential building and the land plot on which it is located within the framework of bankruptcy proceedings of a citizen shall be carried out with the application of guarantees of the rights of the participants of the shared ownership in accordance with Article 255, paragraphs 2 and 3 of the Civil Code of the Russian Federation, which, with regard to the specifics of bankruptcy proceedings, is expressed as follows. When a share in the shared ownership of the debtor is sold at a public auction, the liquidator sends the other participants in the shared ownership an offer to purchase the debtor's share, stating its value at the starting price of the auction. If there is consent, the liquidator will conclude a contract of sale with the relevant co-owner(s). If no consent is given within one month, the debtor's share in the shared property shall be sold by public auction. In this case, as well as in the case of sales by repeated auction and sales by public offer, the provision on the right of pre-emption purchase of co-owners does not apply.

The Constitutional Court concluded that there were no grounds for reviewing the applicant's case. The applicant is entitled to compensatory mechanisms in relation to enforcement decisions based on the contested provisions, if it is established that his legitimate expectations as the winner of the public tender were based on the interest of a bona fide purchaser of the dwelling (house) and the land under it.