

**By the Judgement of 4 June 2024 No.28-II, the Constitutional Court assessed constitutionality of Article 446 (paragraph 2 of part 1) of the Civil Procedure Code of the Russian Federation and Article 213<sup>25</sup> of the Federal Law “On Insolvency (bankruptcy)”.**

These interrelated legal provisions have been considered in so far as they serve as a basis for resolving the issue of the exclusion from the bankruptcy estate of a debtor-citizen of part of the monetary proceeds from the sale in bankruptcy proceedings of the only dwelling of the debtor and his family members, which is subject to a mortgage and which remains after the settlement with the secured creditor (even if the dwelling is marital property).

The contested interrelated provisions - as allowing in judicial practice the extension of property (enforcement) immunity to the said monetary funds - were recognised as compatible with the Constitution.

The challenged interrelated provisions were also found to be inconsistent with the Constitution of the Russian Federation, as they do not provide certainty as to the conditions for extending property (enforcement) immunity to the monetary funds in question.

Until the federal legislator makes necessary changes to the legal regulation:

at the request of the citizen-debtor, the court shall exclude from the bankruptcy estate of the citizen-debtor the said funds (with the exception of amounts used for the satisfaction of a secured creditor’s claim and for the settlement of other claims and expenses provided for Article 213<sup>27</sup> of the Insolvency law) as protected by property (enforcement) immunity;

the amount of the said monetary funds excluded from the bankruptcy estate of the citizen-debtor by a court decision may be reduced in favour of the bankruptcy estate of the citizen-debtor, if this amount makes it possible to acquire residential premises, if this amount makes it possible to acquire housing the characteristics of which clearly exceed what is necessary to satisfy the reasonable housing needs of the citizen-debtor and his family members.

the same grounds for refusing to satisfy a citizen-debtor’s request for exclusion of the said funds from the bankruptcy estate as those relating to the debtor’s bad faith, which apply when refusing to extend property (enforcement) immunity to the only dwelling not subject to a mortgage, are permitted;

in determining the amount of these funds protected by property (enforcement) immunity, it is necessary to take into account that prior to the distribution of the

amounts intended for the repayment of the claims of the secured creditor, as well as other claims and expenses (provided for Article 213<sup>27</sup> of the Insolvency law) from the proceeds of the sale of the only and mortgaged residential premises of the citizen-debtor and his family members, the part of the funds that corresponds to the share of the spouse (former spouse) of the citizen-debtor is not subject to the exclusion (allocation) if such residential premises belonged to the spouses on the basis of marital property and their mortgage secured the fulfilment of joint obligations of the spouses.