

Position of the Constitutional Court of the Russian Federation on the Matter of Restricting Constitutional Rights of Citizens Concerning Banking Secrecy

Authors : A. V. Shashkova

Abstract : The aim of the present article is to analyze the position of the Constitutional Court of the Russian Federation on the matter of restricting the constitutional rights of citizens to inviolability of professional and banking secrecy in effecting controlling activities. The methodological ground of the present Article represents the dialectic scientific method of the socio-political, legal and organizational processes with the principles of development, integrity, and consistency, etc. The consistency analysis method is used while researching the object of the analysis. Some public-private research methods are also used: the formally-logical method or the comparative legal method, are used to compare the understanding of the 'secrecy' concept. The aim of the present article is to find the root of the problem and to give recommendations for the solution of the problem. The result of the present research is the author's conclusion on the necessity of the political will to improve Russian legislation with the aim of compliance with the provisions of the Constitution. It is also necessary to establish a clear balance between the constitutional rights of the individual and the limit of these rights when carrying out various control activities by public authorities. Attempts by the banks to 'overdo' an anti-money laundering law under threat of severe sanctions by the regulators actually led to failures in the execution of normal economic activity. Therefore, individuals face huge problems with payments on the basis of clearing, in addition to problems with cash withdrawals. The Bank of Russia sets requirements for banks to execute Federal Law No. 115-FZ too high. It is high place to attract political will here. As well, recent changes in Russian legislation, e.g. allowing banks to refuse opening of accounts unilaterally, simplified banking activities in the country. The article focuses on different theoretical approaches towards the concept of 'secrecy'. The author gives an overview of the practices of Spain, Switzerland and the United States of America on the matter of restricting the constitutional rights of citizens to inviolability of professional and banking secrecy in effecting controlling activities. The Constitutional Court of the Russian Federation basing on the Constitution of the Russian Federation has its special understanding of the issue, which should be supported by further legislative development in the Russian Federation.

Keywords : constitutional court, restriction of constitutional rights, bank secrecy, control measures, money laundering, financial control, banking information

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