

THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT  
OF THE RUSSIAN FEDERATION

Judgment

of 23 January 2007 No. 1-II

in the case concerning the review of the constitutionality of the provisions of Section 1, Article 779, and Section 1, Article 781 of the Civil Code of the Russian Federation, in connection with complaints of Agentstvo Korporativnoy Bezopasnosti LLC and V. V. Makeyev.

Moscow, 23 January 2007

The Constitutional Court of the Russian Federation composed of Presiding Judge N. S. Bondar and Judges G. A. Gadzhiev, A. L. Kononov, L. O. Krasavchikova, S. P. Mavrin, Yu. D. Rudkin, A. Ya. Sliva, V. G. Strekozov, B. S. Ebzeev, V. G. Yaroslavtsev,

in the attendance of the representatives of Agentstvo Korporativnoy Bezopasnosti LLC N. Yu. Strekozova, Director General, and S. I. Kovalev, PhD in Law, V. V. Makeyev and attorneys M. M. Zakharin and Yu. A. Larin as his representatives, Permanent Representative of the State Duma to the Constitutional Court of the Russian Federation Ye. B. Mizulina, Representative of the Council of the Federation Ye. V. Vinogradova, PhD in Law, Plenipotentiary Representative of the President of the Russian Federation to the Constitutional Court of the Russian Federation M. V. Krotov,

pursuant to Section 4, Article 125 of the Constitution of the Russian Federation, Subsection 3, Section 1, Sections 3 and 4, Article 3, Subsection 3, Section 2, Article 22, Articles 36, 74, 86, 96, 97 and 99 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”,

in an open hearing, examined the constitutionality of the provisions of Section 1, Article 779, and Section 1, Article 781 of the Civil Code of the Russian Federation.

The reason for the consideration of the case is complaints of Agentstvo Korporativnoy Bezopasnosti LLC and V. V. Makeyev about violation of constitutional rights and freedoms by Section 1, Article 779, and Section 1, Article 781 of the Civil Code of the Russian Federation. The ground for the consideration of the case is the discovered uncertainty of whether the provisions challenged by the applicants are in conformity with the Constitution of the Russian Federation.

Insofar as both complaints concern essentially the same subject matter and pursuant to Article 48 of the Federal Constitutional Law “On the Constitutional Court of the Russian

Federation”, the Constitutional Court of the Russian Federation is permitted to consider these applications together.

Having heard the report of Judge-Rapporteur A. L. Kononov, the expert opinion of D. I. Stepanov, PhD in Law, interventions by V. L. Slesarev, Deputy President of the Supreme Arbitration Court of the Russian Federation, attorney K. I. Sklovsky for the Federal Chamber of Lawyers; and having considered written submissions and other materials, the Constitutional Court of the Russian Federation

e s t a b l i s h e d :

1. Pursuant to Section 1, Article 779, and Section 1, Article 781 of the Civil Code of the Russian Federation, under a paid service agreement the service provider undertakes to render services (to perform an act or to exercise activities) on the customer’s instructions, and the customer undertakes to pay for the services within the term and on the conditions provided for by the paid service agreement.

1.1. The constitutionality of the above-mentioned legal provisions is challenged by Agentstvo Korporativnoy Bezopasnosti LLC, whose suit for recovery of arrears under a paid service agreement was dismissed by the decision of the Arbitration Court of Moscow on 11 August 2004 as upheld by the Judgment of the Federal Arbitration Court of the Moscow Circuit on 21 December 2004. The company attempted to recover from the administration of the settlement Voskhod of the Istra District of the Moscow Region the amounts payable to it as a service provider under a paid service agreement for representation of the administration's interests in the Arbitration Court of the Moscow Region. The arrears occurred on the part of the fee, which was agreed to be 3 percent of the amount awarded by the court and which was payable if the court ruled in favor of the suit.

The Arbitration Court of Moscow acted on the premise that the claim of the service provider for recovery of the fee under the paid service agreement shall not be granted if it is based on the contractual provision which conditions the amount and the obligation of payment for services by a decision of a court or state authority that will be taken in the future.

Agentstvo Korporativnoy Bezopasnosti LLC requests to recognize the provisions of Section 1, Article 779, and Section 1, Article 781 of the Civil Code of the Russian Federation, applied in its case in the meaning attributed to them in the law-enforcement practice, as violating the rights and freedoms guaranteed by Articles 8, 19 (Section 1), 34 (Section 1), 35, 46 (Section 1) and 55 (Sections 2 and 3) of the Constitution of the Russian Federation.

The complaint of V. V. Makeyev makes a similar claim. As follows from the materials submitted to the Constitutional Court of the Russian Federation, the Arbitration Court of

Moscow, by the judgment of 24 December 2002, ruled in favor of the suit of the Moscow City Chamber of Lawyers against the Administration of the President of the Russian Federation aimed at recovery of arrears under a paid service agreement for legal aid. V. V. Makeyev, an attorney, who provided legal services under the agreement, participated in the proceedings as a third party.

The appellate instance of the same court reached the conclusion that the court of first instance did not make legal assessment of certain provisions of the agreement that conditioned the payment by decisions that will be taken in future. Accordingly, by the decision of 25 March 2003, it invalidated the transaction on the basis of Article 168 of the Civil Code of the Russian Federation, and dismissed the suit with reference to Section 1, Article 779, and Section 1, Article 781 of the Civil Code of the Russian Federation.

The Federal Arbitration Court of the Moscow Circuit considered the case on cassation and, by the decision of 27 June 2003, overruled the appellate decision and upheld the judgment of the first instance court.

The Presidium of the Supreme Arbitration Court of the Russian Federation overruled the first instance court judgment and cassation decision and upheld the appellate decision. It stated that the legal nature of the relations under a paid service agreement does not permit to satisfy the service provider's claim of a fee if this claim is based on a contractual provision that conditions the amount and the obligation of payment for services by a decision of a court or state authority that will be taken in the future (Judgment of 2 December 2003).

1.3. As follows from Articles 74, 96 and 97 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", the Constitutional Court of the Russian Federation, upon complaints of citizens and their associations about violation of constitutional rights and freedoms, reviews the constitutionality of the normative provisions which are the subject-matter of the complaint, only to the extent that they were applied in the applicant's case and affect his constitutional rights and freedoms. The Constitutional Court of the Russian Federation in consideration of the case gives regard to both the literal meaning of the normative provisions under review and the meaning these provisions acquire in the law-enforcement practice and from their place within the hierarchy of legal norms.

Thus, the subject-matter for consideration by the Constitutional Court of the Russian Federation in the present case is the provisions of Section 1, Article 779, and of Section 1, Article 781 of the Civil Code of the Russian Federation, providing that under a paid service agreement the service provider undertakes to render services (to perform an act or to exercise activities) on the customer's instructions, and the customer undertakes to pay for the services within the term and on the conditions provided for by the paid service agreement, to the extent

that these provisions within the meaning they acquired in the law-enforcement practice preclude granting the claim of the service provider for payment of the fee if the amount of the fee is conditioned by a court decision that will be taken in the future.

2. Pursuant to the Constitution of the Russian Federation, state protection of the rights and freedoms is guaranteed to everyone; everyone has the right to protect his rights and freedoms by all means not prohibited by law (Article 45); judicial protection of the rights and freedoms is guaranteed to everyone (Article 46); courts shall administer justice relying on the principles of independence and being bound only by to the Constitution of the Russian Federation and federal law (Article 118, Section 1; Article 120, Section 1).

An important guarantee of the exercise and protection of the rights and freedoms of man and citizen established by the Constitution of the Russian Federation, is everyone's right to receive qualified legal assistance (Article 48, Section 1), which is related to the obligation of the State to ensure proper conditions, *inter alia*, those of normative nature, for everyone to request legal assistance in case of necessity and in order to protect and defend his rights and lawful interests. Pursuant to the above-mentioned constitutional provisions taken together with Article 71 (c) and 76 (Section 1) of the Constitution of the Russian Federation, which establish the powers of the Russian Federation to regulate the rights and freedoms of man and citizen, regulation of legal assistance relations falls within the competence of the federal legislator. And according to the legal opinion expressed by the Constitutional Court of the Russian Federation in Judgment No. 15-II of 19 May 1998, the Constitution of the Russian Federation establishing, in Articles 45 (Section 1) and 48 (Section 1), the obligation of the State to guarantee protection of rights in freedoms, including the right to receive qualified legal assistance, does not narrow the legislator's choice of the means to perform this obligation.

The federal legislator, using his powers in the above-mentioned domain, enjoys sufficient discretion to choose a specific model of legal regulation of legal assistance (legal aid), including an appropriate type and essential conditions of a civil law contract to be used. At the same time, it cannot act arbitrarily and in any event is bound by the necessity to ensure that the principles and norms forming the constitutional basis of regulation of the social relations in this domain are complied with. Further, it must use means and methods of exerting legal influence which are adequate to the specificity of the relations; and in particular, it must consider the principle of freedom of contract established by the Civil Code of the Russian Federation.

2.1. Social relations as regards legal assistance are intertwined with the respective persons' exercise of the State's constitutional obligation to ensure proper guarantees for universal access to legal services and an opportunity for every person to get assistance of qualified specialists in law if they are interested in performing certain actions. Therefore, these

relations embody the public interest, and the rendering of legal services has public law significance. The Constitutional Court of the Russian Federation has confirmed this conclusion on many occasions, in particular in respect of lawyers, who, under the Federal Law “On the Activity of Attorneys and Legal Practice in the Russian Federation”, on a professional basis provide qualified legal assistance to individuals and legal persons to protect their rights, freedoms and interests and to ensure their access to justice (Judgment No. 18-II of 23 December 1999, Decision No. 282-O of 21 December 2000).

The public elements of legal assistance relations are also predetermined by their existence within the interaction of the functioning of judicial power institutions and the exercise of the right to judicial protection. Accordingly, the right to receive qualified legal assistance is a guarantee for protection of rights, freedoms and lawful interests and at the same time a prerequisite for proper administration of justice, ensuring its adversarial nature and equality of the parties (Article 123, Section 3 of the Constitution of the Russian Federation).

2.2. At the same time, regarding the nature of civil law as invoked at the parties’ will, persons seeking legal assistance have the right to decide on their own whether there is a possibility and necessity to enter into a paid legal service agreement, to choose optimal forms of such assistance, and to determine, by concurrence of wills of the parties mutually acceptable conditions of payment (as long as otherwise is not prescribed by the Constitution of the Russian Federation and federal law).

As the Constitutional Court of the Russian Federation has stated on many occasions, particularly in Judgments No. 9-II of 6 June 2000 and No. 4-II of 1 April 2003, the freedom of civil law contracts within its constitutional law meaning implies observance of the principles of equality and concurrence of the parties’ wills. Consequently, contractual obligations regulated by civil legislation shall be based on equality of the parties, autonomy of their will, proprietary independence, and impermissibility of arbitrary interference in private affairs. Civil law entities are free to establish their rights and obligations under a contract and to determine any conditions of a contract which do not contradict statutory imperatives (Sections 1 and 2, Article 1 of the Civil Code of the Russian Federation).

At the same time the Constitutional Court of the Russian Federation highlighted that constitutionally protected freedom of contract should not lead to denial or derogation of other universally recognized rights and freedoms; this freedom is not absolute and can be restricted; however, the possibility and nature of restrictions shall be determined on the basis of the Constitution of the Russian Federation, which states that the rights and freedoms of man and citizen may be restricted only by federal law to the extent necessary to protect the fundamentals

of the constitutional order, morals, health, the rights and lawful interests of others, and to ensure defense of the country and the security of the State (Article 55, Sections 1 and 3).

The freedom of contract has its objective limits which are determined by the fundamentals of the constitutional and public order. In particular, it is impermissible to extend the contractual relations and their principles to those spheres of social life where the State exercises its power. Insofar as state authorities and officials ensure exercise of the people's powers, their activity (in itself or its results) cannot be subjected to private law regulation, as well as the exercise of civil law rights and obligations cannot predetermine specific decisions and actions of state authorities and officials.

As to the exercise of judicial power, this approach is predetermined, in particular, by the principles of autonomy and independence of the judicial branch (Article 10; Article 11, Section 1; Article 118 and 120 of the Constitution of the Russian Federation, Article 1 of the Federal Constitutional Law "On Judicial System of the Russian Federation"). Justice in the Russian Federation shall be administered only by courts, considering and deciding specific cases in court proceedings in strict conformity with the constitutional, civil, administrative and criminal procedures prescribed by law (Sections 1 and 2, Article 118) on the basis of free assessment of evidence by a judge according to his personal convictions and observing the principles of adversary proceedings and equality of the parties (Section 3, Article 123 of the Constitution of the Russian Federation), which predetermines that the function of adjudication in any of its manifestations is separated from the functions of the parties arguing before the court.

2.3. Consequently, the legal regulation of social relations in legal assistance shall ensure a proper balance of such constitutionally protected values as a guarantee of qualified and affordable (*inter alia* free) legal assistance, independence and autonomy of the judicial branch, and freedom to establish contractual rights and obligations of the parties in civil law relations in legal assistance, including the possibility to determine a fair amount of the fee.

These considerations predetermine the duty of the legislator to ensure a reasonable balance of imperative and voluntary methods of legal regulation in this sphere, coordination of private and public interests, which is adequate to their legal nature. The measures necessary to achieve this aim shall be, however, taken with due regard to the conditions of the particular stage of development of the Russian statehood, the state of its legal and judicial systems.

3. The legislation in force does not provide separate legal regulation of legal assistance as an independent subject-matter. These relations are regulated by a range of legal acts which includes the Civil Code of the Russian Federation and in particular its Chapter 39 on the obligations under a paid service agreement.

3.1. Within the meaning of the provisions of this Chapter of the Civil Code of the Russian Federation, a paid service agreement may cover different services, among which (depending on the specificity of the service provider's economic activity) there are telecommunication, medical, consulting, audit, information, educational and other services.

Further normative regulation of particular kinds of services with regard to their specificity is exercised by adopting individual statutes and enacting rules, by the Government of the Russian Federation, on the basis on these statutes.

The federal legislator acting within his competence provides a normative definition of the paid service agreement that allows to identify its specificity and to distinguish it from other contracts (Section 1, Article 779 of the Civil Code of the Russian Federation). The scope of the paid service agreement consists in the performance of an act or exercise of activities by the service provider.

The federal legislator defined comprehensively the scope of the contract, which is the essential condition of the contract, but did not include in it the achievement of the result for which the paid service agreement is concluded. The reason why the scope of this agreement is described as performance of an act or exercise of activities is that even within one kind of services the result for which the contract has been concluded is not always achievable *inter alia* due to the objective reasons.

Consequently, when the parties conclude a paid service agreement they are free to determine the contract value, the term of performance, the procedure and the amount of payment. However, they have no right to alter the imperative statutory requirement on the scope of this agreement.

3.2. Legal service is one of the common kinds of services regulated by Chapter 39 of the Civil Code of the Russian Federation. Legal services may encompass oral and written legal advice, drafting of legal documentation (lawsuits, opinions, appeals and cassation appeals, etc.), expert opinions, participation in court proceedings, etc. The contract may be concluded either with a law firm (Articles 20 and 25 of the Federal Law "On the Activity of Attorneys and Legal Practice in the Russian Federation") or with any other entities, which under the legislation in force are entitled to render paid legal services.

The paid legal service agreement has its own specificity. In particular, under such agreements the performance of an act or exercise of activities is aimed at defending the interests of the service receiver in courts and other state (jurisdictional) authorities, which as a rule are obliged to deliver a decision on the claim. That is why the customer's interest is often not limited just to the rendering of legal services as such, but consists in achieving a positive result of the

service provider's activity (decision in favour of a suit or complaint, another decision in the customer's favour), which goes beyond the scope of the contract.

In practice, as is in particular confirmed by the materials submitted in the present case, contracts frequently contain clauses according to which a positive court decision delivered in favour of the client (the customer) entitles the service provider (the performer) to payment of a certain amount calculated as a percentage of the amount awarded by the court.

By challenging the constitutionality of the provisions of Section 1, Article 779, and Section 1, Article 781 of the Civil Code of the Russian Federation, in the Constitutional Court of the Russian Federation, the applicants in fact act on the premise that not only actions (activities) themselves but also specific results for which the agreement is concluded are payable under a paid service agreement, namely the decision delivered in favour of the applicant. Meanwhile, such aim cannot be considered as being compliant with the requirements of Chapter 39 of the Civil Code of the Russian Federation (within the meaning in which the aims of certain contracts are determined in the Civil Code of the Russian Federation or derived from the content of a particular contract in the course of interpretation under Section 2, Article 431 of the Civil Code of the Russian Federation).

The materials submitted to the Constitutional Court of the Russian Federation in the present case demonstrate that arbitration courts considering specific cases, as a rule, imply that the nature of legal services relations does not permit to award the claim of the service provider for payment of a fee for a decision delivered in favour of the customer if the service provider substantiates his claim with reference to the contractual clause which conditions the amount of the fee for legal services by a decision of a court or state authority that will be taken in the future. This opinion is also shared by the Presidium of the Supreme Arbitration Court of the Russian Federation (information letter No. 48, "On Certain Issues of Judicial Practice on the Disputes over Legal Service Agreements", of 29 September 1999).

3.3. The Constitutional Court of the Russian Federation has repeatedly stated that the judicial practice shall ensure constitutional interpretation of the applicable normative provisions (Judgment No. 21-II of 23 December 1997, No. 4-II of 23 February 1999, No. 5-II of 28 March 2000 etc.).

The provisions of Section 1, Article 779, and Section 1, Article 781 of the Civil Code of the Russian Federation, regulating the whole set of social relations in paid legal services, are norms of general nature, and their implementation is ensured, among other means, by detailed regulation in other normative acts. In the absence of such detailed legal regulation, their normative contents shall be individualized in the law-enforcement practice relying on the

constitutional principles and fundamentals of civil legislation and in compliance with the fundamentals of public order.

In particular, interpretation and implementation of the above-mentioned legal provisions, as they do not directly establish criteria for restrictions and prohibitions that shall be put on determination of the amount of the fee for legal services, in each case shall be exercised within the common system of constitutional and civil law regulation. And this regulation shall be based on the constitutional principles which have (as the Constitutional Court of the Russian Federation highlighted in certain judgments) the highest degree of normative generalization, predetermine the content of constitutional human rights and other rights of citizens that are of universal nature and, thereby, have regulative impact on all spheres of social relations (Judgment No. 1-II of 27 January 1993, No. 5-II of 10 April 2003).

Pursuant to the constitutional principles and norms, in particular the principles of freedom of contract, access to court, autonomy and independence of the judiciary, adversary proceedings and equality of the parties, it is implied that the parties to a paid legal service agreement, regarding nature of the civil law as invoked at the parties' will, are free to determine the most optimal conditions of payment, *inter alia* their own procedure and terms of payment (payment in advance, provisional payments, installments payment, credit, payment per hour, payment as a percentage of the value of a suit, etc.). However, they cannot condition the payment of a fee by the delivery of a specific court decision. The system of legal regulation in force and particularly the civil legislation prohibit making a court decision either an object of civil rights (Article 128 of the Civil Code of the Russian Federation) or the scope of a civil law contract (Article 432 of the Civil Code of the Russian Federation).

The inclusion of a clause conditioning the payment of a fee by the fact of a court decision favourable to a plaintiff in the text of a paid legal service agreement contradicts the fundamentals of civil legislation that permit the parties to be free in determining any conditions of the contract to the extent that they do not contradict the legislation (Section 2, Article 1 of the Civil Code of the Russian Federation), since in such cases the scope of the contract not provided by law would be defined by the contract. Moreover, in this case no account is taken of the fact that within the meaning of Section 1, Article 423 of the Civil Code of the Russian Federation, payment under the paid service agreement, as well as under any other contract for value, is made for the performance of obligations.

3.4. Thus, the provisions of Section 1, Article 779, and Section 1, Article 781 of the Civil Code of the Russian Federation conform to the Constitution of the Russian Federation, since, within the system of legal regulation of paid legal services in force, they preclude awarding the claims of the service provider for fee payment under the paid service agreement if this claim is

based on a contractual provision conditioning the amount of the fee by a decision of a court that will be taken in the future.

However, nothing prevents the federal legislator, giving regard to specific conditions of the development of the legal system and on the basis of the constitutional principles of administration of justice, from providing any other legal regulation, in particular within the scope of special legislation on the procedure and conditions of exercising the rights to qualified legal assistance.

Concluding from the above and pursuant to Section 1 and 2, Article 71, Articles 72, 74, 75, 79 and 100 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the Constitutional Court of the Russian Federation

h e l d :

1. To recognize the provisions of Section 1, Article 779, and Section 1, Article 781 of the Civil Code of the Russian Federation as conforming to the Constitution of the Russian Federation to the extent that they, within the system of legal regulation of paid legal services in force, preclude awarding the claims of the service provider for payment of a fee under a paid service agreement if this claim is based on a contractual provision conditioning the amount of the fee by a decision of a court that will be taken in the future.

2. This Judgment shall be final and shall not be subject to any appeal, it shall come into force immediately upon pronouncement, shall be directly applicable and shall not require confirmation by other authorities and state officials.

3. Pursuant to Article 78 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, this Judgment shall be published in the Collection of Laws of the Russian Federation and *Rossiyskaya Gazeta*. The Judgment shall also be published in the Bulletin of the Constitutional Court of the Russian Federation.

Constitutional Court  
of the Russian Federation

No. 1-II