

By the Judgment of 8th April, 2014 No. 10-II/2014 the Constitutional Court gave appraisal of constitutionality of the provisions of Item 6 of Article 2 and Item 7 of Article 32 of the Federal Law “On Non-Commercial Organizations”, Section 6 of Article 29 of the Federal Law “On Public Associations” and Section 1 of Article 19.34 of the Administrative Offences Code of the Russian Federation

The subject-matter of consideration were legislative provisions, on the basis of which the question is decided on recognition of a non-commercial organization, including public association, as performing functions of a foreign agent and obligation is established of a non-commercial organization, intending to carry out its activity in the indicated quality after State registration, to submit an application on its inclusion in the register of non-commercial organizations, performing functions of a foreign agent, to an authorized body (hereinafter referred to as “the Register”). The Constitutional Court also verified constitutionality of the provisions of the Administrative Offences Code of the Russian Federation, envisaging administrative responsibility for carrying out activity by a non-commercial organization, performing functions of a foreign agent, not included in the Register, in the form of administrative fine imposed on officials in the amount of 100,000 to 300,000 roubles, on juridical persons – 300,000 to 500,000 roubles.

The Constitutional Court recognized the contested interconnected provisions of the Federal Laws “On Non-Commercial Organizations” and “On Public Associations” as not contradicting the Constitution of the Russian Federation, since they are directed at ensuring transparency (openness) of activity of non-commercial organizations, receiving monetary means and other property from foreign sources and participating in political activity carried out on the territory of the Russian Federation, with the aim to influence – directly or indirectly (by way of forming public opinion) – the decisions taken by State bodies and State policy conducted by them. This regulation contemplates no interference with determination of the preferred content and priorities of such an activity and means

no negative legislative appraisal of non-commercial organizations performing functions of a foreign agent.

It is pointed out in the Judgment that the said legislative provisions establish notification procedure of inclusion of non-commercial organizations in the Register and do not hinder them to freely search for and receive monetary means and other property both from foreign and from Russian sources and use them for organization and carrying out political activity, including in the interests of foreign sources.

The contested norms proceed from the presumption of legality and conscientiousness of activity of non-commercial organizations and do not deprive them of the right to court protection against unfounded demands of bodies of justice or public prosecution to hand in application on inclusion in the Register, imposing the burden of proof of the need to hand in such an application on respective State bodies.

The Constitutional Court also recognized as not contradicting the Constitution of the Russian Federation the contested provision of the Administrative Offences Code of the Russian Federation, so far as it does not contemplate coming of administrative responsibility for carrying out political activity on the territory of the Russian Federation by a non-commercial organization, performing functions of a foreign agent, after handing in application on its inclusion in the Register in the established procedure to an authorized body and does not admit making officials and juridical persons administratively answerable for actions (inaction), forming signs of the objective side of *corpus delicti* of a given administrative offence, but having taken place prior to establishment of administrative responsibility for their commission.

At the same time, in the part of establishment of minimum amounts of administrative fine this provision of the Administrative Offences Code of the Russian Federation has been recognized as not conforming to the Constitution of the Russian Federation to the extent to which this provision, not admitting

prescription of an administrative penalty below the lowest bound, established by a respective sanction, does not allow the law-applier in all cases in a proper way to take into consideration the character and consequences of the committed administrative offence, the degree of guilt of the person made administratively answerable, his property and financial status, as well as other circumstances, having substantial significance for individualization of administrative responsibility and thereby ensure prescription of a fair and proportionate administrative penalty.

Until necessary legislative amendments are made, the amount of administrative fine, prescribed for officials and juridical persons for the commission of an administrative offence, envisaged by the contested provision, may be reduced by court below the lowest bound, determined by the sanction of this norm, in cases when its imposition within the established bounds does not answer the goals of administrative responsibility and evidently entails surplus restriction of property rights of the person made administratively answerable.