

By the Judgment of 11th December, 2014 No. 32-II/2014 the Constitutional Court gave appraisal of constitutionality of the provisions of Article 159⁴ of the Criminal Code of the Russian Federation.

The contested provisions were the subject-matter of consideration as fixing in the system of norms regulating criminal responsibility for swindling a special *corpus delicti*, namely swindling linked with premeditated non-fulfilment of contractual obligations in the field of entrepreneurial activity, and envisaging for this action penalty in the form of deprivation of liberty, whose maximum term does not exceed 5 years.

The Constitutional Court recognized the contested legislative provisions as conforming to the Constitution of the Russian Federation, having revealed their constitutional-law meaning.

They establish special composition of swindling, contemplating guilty use of a contract, obligations on which will wittingly not be fulfilled (but not as a result of circumstances which may determine their non-fulfilment by virtue of risky character of entrepreneurial activity), for theft of someone else's property or acquisition of the right to someone else's property by way of fraud or breach of confidence, which testifies to the presence of express malice of the subject of a crime to carry out swindler, and envisaging differentiation of penalties for its commission depending on the cost of the stolen.

The indicated provisions are aimed at delimitation of criminally punishable actions from entrepreneurial activity proper, exclusion of the possibility to settle civil-law disputes by means of criminal prosecution, creation of the mechanism of protection of conscientious entrepreneurs against unfounded making criminally answerable, concretizing of the regulation of criminal responsibility for commission of unlawful swindling actions by subjects of entrepreneurial activity as well as exclusion of the possibility for guilty persons to escape criminal responsibility under cover of a civil-law deal, and are thereby directed at the protection of property relations and stimulation of legal entrepreneurial activity, exercised by its subjects independently, at their own risk and based on the

principles of juridical equality and conscientiousness of parties, freedom of contract and competition.

At the same time the contested normative provisions have been recognized as not conforming to the Constitution of the Russian Federation to the extent to which they establish for swindling linked with premeditated non-fulfilment of contractual obligations in the field of entrepreneurial activity, if it has been committed in a particularly large amount, penalty disproportionate with its public danger in the form of deprivation of liberty for the term which allows to ascribe this crime to the category of crimes of medium gravity, whereas for the same action committed also in a particularly large amount, responsibility for which, without determination of its specific character as to the subject and way of commission as applied to some or other concrete fields of entrepreneurial activity, is envisaged by the general norm of Article 159 of the Criminal Code of the Russian Federation, the penalty is established in the form of deprivation of liberty for a term ascribing it to the category of grave crimes, and as applied to coming of criminal responsibility in accordance with Article 159 of the Criminal Code of the Russian Federation essentially smaller amount is recognized as a particularly large amount of the stolen than in accordance with Article 159⁴.