

**IN THE NAME OF THE RUSSIAN FEDERATION**

**The Constitutional Court of the Russian Federation**

**Judgment**

**of 17<sup>th</sup> February, 2015 No. 2-II/2015**

**on the case concerning the review of constitutionality of the provisions of Item 1 of Article 6, Item 2 of Article 21 and Item 1 of Article 22 of the Federal Law “On Prosecutor’s Office of the Russian Federation” in connection with complaints of the Interregional Association of Human Rights Protective Public Associations “AGORA”, Interregional Public Organization “Human Rights Protective Centre “Memorial”, International Public Organization “International Historical-Enlightening, Charitable and Human Rights Protective Society “Memorial”, Regional Public Charitable Organization to Help Refugees and Forced Migrants “Civic Assistance”, Autonomous Non-Commercial Organization for Legal, Information and Expert Services “Zabaikal’sky Human Rights Protective Centre”, Regional Public Foundation “International Standard” in Republic of Bashkortostan and S.A.Gannushkina.**

The Constitutional Court of the Russian Federation composed of the President V.D.Zor’kin, Judges K.V.Aranovsky, A.I.Boitsov, N.S.Bondar’, G.A.Gadzhiev, Yu.M.Danilov, L.M.Zharkova, G.A.Zhilin, S.M.Kazantsev, M.I.Kleandrov, S.D.Knyazev, A.N.Kokotov, L.O.Krasavchikova, S.P.Mavrin, N.V.Mel’nikov, N.V.Seleznev, V.G.Yaroslavtsev,

with participation of S.A.Gannushkina, representative of Interregional Public Organization “Human Rights Protective Centre “Memorial”, International Public Organization “International Historical-Enlightening, Charitable and Human Rights Protective Society “Memorial” and Regional Public Charitable Organization to Help Refugees and Forced Migrants “Civic Assistance” lawyer S.A.Golubok, representative of Interregional Association of Human Rights Protective Public Associations “AGORA”, Autonomous Non-Commercial Organization for Legal, Information and Expert Services “Zabaikal’sky Human Rights Protective Centre”

and Regional Public Foundation “International Standard” in Republic of Bashkortostan R.Kh.Akhmedgaliyev, Plenipotentiary Representative of the State Duma to the Constitutional Court of the Russian Federation D.F.Vyatkin, Plenipotentiary Representative of the Council of Federation to the Constitutional Court of the Russian Federation A.I.Alexandrov, Plenipotentiary Representative of the President of the Russian Federation to the Constitutional Court of the Russian Federation M.V.Krotov,

guided by Article 125 (Section 4) of the Constitution of the Russian Federation, Item 3 of Section 1, Sections 3 and 4 of Article 3, Section 1 of Article 21, Articles 36, 74, 86, 96, 97 and 99 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”,

in an open session considered the case on the review of constitutionality of Item 1 of Article 6, Item 2 of Article 21 and Item 1 of Article 22 of the Federal Law “On Prosecutor’s Office of the Russian Federation”.

The reason for the consideration of the case was the collective complaint of Interregional Public Organization “Human Rights Protective Centre “Memorial”, International Public Organization “International Historical-Enlightening, Charitable and Human Rights Protective Society “Memorial”, Regional Public Charitable Organization to Help Refugees and Forced Migrants “Civic Assistance” and S.A.Gannushkina as well as Interregional Association of Human Rights Protective Public Associations “AGORA”, Autonomous Non-Commercial Organization for Legal, Information and Expert Services “Zabaikal’sky Human Rights Protective Centre”, Regional Public Foundation “International Standard” in Republic of Bashkortostan. The ground for the consideration of the case was the discovered uncertainty of whether the legislative provision contested by the petitioners conforms to the Constitution of the Russian Federation.

So far as all complaints pertain to one and the same subject, the Constitutional Court of the Russian Federation, guided by Article 48 of the Federal Constitutional

Law “On the Constitutional Court of the Russian Federation”, merged cases on these complaints in one proceeding.

Having heard the report of Judge-Rapporteur N.S.Bondar’, statements of representative of parties, interventions by representatives invited to the hearing: T.A.Vasilyeva from the Prosecutor General of the Russian Federation, M.A.Mel’nikova from the Ministry of Justice of the Russian Federation, I.G.Shablinsky from the Presidential Council on Development of Civil Society and Human Rights, having examined submitted documents and other materials, the Constitutional Court of the Russian Federation

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

1. In accordance with the Federal Law of 17<sup>th</sup> January, 1992 No. 2202-I “On Prosecutor’s Office of the Russian Federation”, prosecutor’s demands, following from his powers to check execution of laws by governing bodies and heads of non-commercial organizations, are subject to unconditional fulfilment in an established term (Item 1 of Article 6); when exercising supervision over execution of laws bodies of the prosecutor’s office do not substitute other state bodies; checkups of execution of laws are held on the basis of the information on facts of breach of laws requiring prosecutor’s measures, received by bodies of the prosecutor’s office (Item 2 of Article 21); prosecutor exercising his functions is entitled, upon presentation of his office card, unimpededly enter the territories and premises of bodies, indicated in Item 1 of Article 21 of this Federal Law, have access to their documents and materials, check execution of laws in connection with the information on facts of breach of laws, received by bodies of the prosecutor’s office, demand from heads and other officials of the indicated bodies submission of the necessary documents, materials, statistical and other data, allocation of experts for clarification of arisen questions, holding of checkups on materials and petitions received by bodies of the prosecutor’s office, revision of activity of organizations

under their control or dependent on them, summon officials and citizens for explanations on the pretext of breach of laws (Item 1 of Article 22).

1.1. Constitutionality of Paragraph 2 of Item 2 of Article 21 and Item I of Article 22 of the Federal Law “On Prosecutor’s Office of the Russian Federation” is contested in the collective complaint of the Interregional Public Organization “Human Rights Protective Centre “Memorial”, International Public Organization “International Historical-Enlightening, Charitable and Human Rights Protective Society “Memorial”, Regional Public Charitable Organization to Help Refugees and Forced Migrants “Civic Assistance” and its President S.A.Gannushkina.

Within the framework of the checkup of execution of the legislation in force, held in March – April 2013 by the prosecutor’s office of the City of Moscow with participation of staff-members of the Ministry of Justice of the Russian Federation, Ministry of Internal Affairs of the Russian Federation and the Federal Tax Service in respect of these non-commercial organizations, demands were sent to their heads on submission of constituent and statutory documents, data about founders, other documents, concerning the activity of respective non-commercial organization for checked period, including those disclosing the sources of receipt of means and other property, confirming timely and full submission of reports to the Ministry of Justice of the Russian Federation, documents on spending monetary means and on use of other property, received for exercise of the organization’s activity.

Zamoskvoretsky District Court of the City of Moscow refused to satisfy applications of the indicated non-commercial organizations on questioning decisions and actions of the prosecutor’s office of the City of Moscow on appointing and holding of checkup measures (decisions of 24<sup>th</sup> May, 2013 and of 10<sup>th</sup> July, 2013, left unchanged by courts of higher-ranking instances). Besides, by the resolution of the Justice of the Peace of the judicial section No. 367 of Tverskoy District of the City of Moscow of 19<sup>th</sup> June, 2013 (left unchanged by court of higher-ranking instance) S.A.Gannushkina as an official was made

administratively answerable for commission of the administrative offence envisaged by Article 17.7 of the Administrative Offences Code of the Russian Federation, having expressed itself in intended non-execution of prosecutor's demands following from his powers established by Articles 21 and 22 of the Federal Law "On Prosecutor's Office of the Russian Federation".

In the course of consideration of respective cases, courts came to the conclusion that checkups of the indicated non-commercial organizations were held by the prosecutor's office of the City of Moscow on assignment of the Office of the Prosecutor General of the Russian Federation of 27<sup>th</sup> December, 2012 on the basis of information, which was placed in the Internet on the official sites of these organizations and testified to possible breach of the legislation on non-commercial organizations, performing functions of a foreign agent; documents requested by prosecutors by their nature and amount conform to the subject of checkup measures, as it is envisaged by Article 22 of the Federal Law "On Prosecutor's Office of the Russian Federation", and the demand to submit them to the prosecutor's office places no additional unfounded burdens on checked organizations and entails no financial and other material expenses; inclusion of staff-members of other bodies of state power in the composition of the participants of checkup measures does not diverge from the provisions of the said Federal Law either.

1.2. Constitutionality of Item 1 of Article 6, Item 2 of Article 21 and Item 1 of Article 22 of the Federal Law "On Prosecutor's Office of the Russian Federation" is contested by the Interregional Association of Human Rights Protective Public Associations "AGORA", in respect of which in 2013 – 2014 five checkups were held by the prosecutor's office of Republic of Tatarstan, and three of them concerned observance of the legislation on non-commercial organizations, performing functions of a foreign agent. After request of 21<sup>st</sup> March, 2014 to this non-commercial organization was sent during the last checkup with the demand to submit before 25<sup>th</sup> March 2014 texts of a number of documents in Russian,

including agreements with foreign organizations about donations on realization of respective projects and reports on their realization for the period of 2013 – 2014, it questioned actions of the prosecutor's office of Republic of Tatarstan in court.

Vakhitovsky District Court of the City of Kazan', refusing by the decision of 14<sup>th</sup> May, 2014 (left unchanged by court of higher-ranking instance) to satisfy claimed demands, came to the following conclusions: grounds for holding of checkups were, contrary to petitioner's assertion, not the same, but different circumstances (information about coming through to the accounts of the checked organization of monetary means from foreign sources, data on its political activity, received as a result of Internet monitoring, application of a citizen on checkup of legality of its pedagogical activity, carried out within the framework of one of the projects, received by the prosecutor's office), which, in particular, determined crossing of checkups in time of holding and as a consequence – bringing forward of coinciding demands on submission of documents, concerning the activity of the checked organization, the need of translation of which in Russian is not categorical, and the term of their submission established in the request is sufficient and reasonable. The court pointed out that non-execution or improper execution of by a non-commercial organization of prosecutor's report, passed on the outcome of a checkup held earlier, may be the reason for a repeated checkup and taking of additional measures of prosecutor's reaction; as to individual violations committed by the prosecutor's office, connected with non-clarification of the terms and subject of the checkup, rights and duties of the checked organization and the checkers, they are not substantial and in themselves cannot serve as grounds for recognition of the checkup as unlawful.

1.3. Administration of the Ministry of Justice of the Russian Federation for Zabaikal'sky Territory in February 2012 held planned checkup in respect of the Autonomous Non-Commercial Organization for Legal, Information and Expert Services "Zabaikal'sky Human Rights Protective Centre" for 2010 – 2011, on the outcome of which no breaches were revealed. On 21<sup>st</sup> March, 2013 the

prosecutor's office of Ingodinsky district of the City of Chita in connection with holding of a checkup of execution by this non-commercial organization of the legislation in force for 2010 – 2011 sent to its Director V.V.Cherkasov a demand to submit before 28<sup>th</sup> March, 2013 a number of materials, including constituent and statutory documents, data on sources of receipt of monetary means and property, destined for activity of the organization, with brief analysis of spending of the received monetary means, as well as data about its participation in political activity. These demands were not executed, since V.V.Cherkasov considered them unlawful in the response to its request, received by the prosecutor's office on 29<sup>th</sup> March, 2013.

Proceeding from the provision that execution of prosecutor's demands following from his powers on supervision of execution of legislation by non-commercial organizations is unconditionally binding, the Justice of the Peace of judicial section No. 1 of Central district of the City of Chita made V.V.Cherkasov administratively answerable for commission of the administrative offence envisaged by Article 17.7 of the Administrative Offences Code of the Russian Federation (resolution of 16<sup>th</sup> May, 2013, left unchanged by court of higher-ranking instance).

The Autonomous Non-Commercial Organization for Legal, Information and Expert Services "Zabaikal'sky Human Rights Protective Centre" requests to recognize the provisions of Item 1 of Article 6, Item 2 of Article 21 and Item 1 of Article 22 of the Federal Law "On Prosecutor's Office of the Russian Federation" as not conforming to the Constitution of the Russian Federation.

1.4. Constitutionality of the same legislative provisions is contested by the Regional Public Foundation "International Standard" in Republic of Bashkortostan, whose Director N.V.Karavayeva was made administratively answerable for commission of the administrative offence envisaged by Article 17.7 of the Administrative Offences Code of the Russian Federation, having expressed itself in the refusal to execute the demand of the prosecutor's office of Sovetsky

District of the City of Ufa, sent to this non-commercial organization on 27<sup>th</sup> March, 2013, to submit in connection with the checkup, organized on assignment of the prosecutor's office of Republic of Bashkortostan in order of execution of the mission of Office of the Prosecutor General of the Russian Federation, until 29<sup>th</sup> March, 2013 of a number of materials, including constituent and statutory documents, staff register, copies of labour contracts with staff-members, information about the sources of receipt in 2010 – 2012 of monetary means, their state belonging, purposeful destination, total sum and spending.

As noted in the resolution of the Justice of the Peace of the judicial section No. 1 of Demsky district of the City of Ufa, passed in respect of N.V.Karavayeva (left unchanged by court of higher-ranking instance), demands brought forward by the prosecutor's office, connected with the receipt of materials necessary for checkup of execution of the legislation on counteraction against extremism, including initial book-keeping documents subject to keeping, are lawful and well-founded; the provisions of the Federal Law "On Protection of Rights of Juridical Persons and Individual Entrepreneurs During Exercise of State Control (Supervision) and Municipal Control" do not extend to holding of the prosecutor's office's supervision, therefore holding in February, 2013 of a routine checkup of the financial and economic activity of this non-commercial organization for 2011 – 2012 by the Administration of the Ministry of Justice of the Russian Federation for Republic of Bashkortostan, which revealed no violations, does not hinder holding of supervisory measures by the prosecutor's office, since in its activity it does not substitute other state bodies.

1.5. Petitioners in this case perceive violation of their rights guaranteed by Articles 19, 30 (Section 1) and 55 (Section 3) of the Constitution of the Russian Federation by the provisions of Item 1 of Article 6, Item 2 of Article 21 and Item 1 of Article 22 of the Federal Law "On Prosecutor's Office of the Russian Federation" in the fact that these provisions, contrary to constitutional requirement of formal certainty of a law contain no exact list of grounds for holding by bodies

of the prosecutor's office checkups of execution of laws by non-commercial organizations, do not establish concrete order, periodicity and terms of their holding, including mandatory information of the checkup subjects about its organization and composition of participants, do not fix rights and guarantees for the checked subjects, which leads to arbitrary discretion of bodies of the prosecutor's office at determining duration and number of checkups, held in respect of one and the same non-commercial organization for one and the same period, and – in the presence of powers of the Ministry of Justice of the Russian Federation to exercise formal state supervision over the activity of non-commercial organizations established by the legislation in force – testifies to disproportionate and excessive restriction of the right of association and freedom of activity of public associations.

According to Articles 36, 74, 96 and 97 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation” the Constitutional Court of the Russian Federation on complaints against violation of constitutional rights and freedoms of citizens and their associations verifies constitutionality of a law that has been applied in a specific case, consideration of which has been completed in court, if it comes to the conclusion that there is uncertainty of whether the contested legislative provisions conform to the Constitution of the Russian Federation, and adopts judgment solely on the subject stated in the petition, appraising both the literal meaning of legislative provisions under consideration and the meaning attributed to them by an official and other interpretation or the prevailing law-applying practices, as well as proceeding from their place in the system of legal norms, not being bound when passing the decision by grounds and arguments stated in the petition.

So far as application by courts in cases with participation of the petitioners of Item 1 of Article 22 of the Federal Law “On Prosecutor's Office of the Russian Federation” in the part, investing prosecutor when exercising his functions with the right, upon presentation of his office card, to unimpededly enter the territories and

premises of the checked subjects, demand from heads and other officials allocation of experts for clarification of arisen questions, holding of checkups on materials and petitions received by bodies of the prosecutor's office, revision of activity of organizations under their control or dependent on them, as well as summon officials and citizens for explanations on the pretext of breach of laws is not confirmed by the submitted materials, proceedings on their complaints in this part, as not answering the criteria of admissibility in accordance with the requirements of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", is subject to discontinuance by virtue of its Articles 43 and 68.

Thus, the subject-matter of consideration by the Constitutional Court of the Russian Federation on the present case are the interconnected provisions of Item 1 of Article 6, Item 2 of Article 21 and Item 1 of Article 22 of the Federal Law "On Prosecutor's Office of the Russian Federation", in accordance with which bodies of the prosecutor's office within the framework of supervision over execution of laws by non-commercial organizations hold checkups, during which prosecutor's demands, following from his powers are subject to unconditional fulfilment; when exercising supervision over execution of laws by non-commercial organizations bodies of the prosecutor's office do not substitute other state bodies; prosecutor is entitled to check execution of laws in connection with information on facts of breach of laws received by bodies of the prosecutor's office and requiring prosecutor's measures and demand from heads and other officials of the checked organization submission of the necessary documents, materials, statistical and other data, as well as to recruit to participation in checkup measures representatives (staff-members) of other state organs.

2. Within the meaning of Article 30 (Section 1) of the Constitution of the Russian Federation in its interconnection with its Articles 1 (Section 1), 2, 13, 17 (Section 1) 29 (Sections 1 and 3) and 32 (Section 1), in the Russian Federation as a democratic and law-governed state, based on the recognition, observance and protection of human and civil rights and freedoms, ideological and political

diversity, everyone's right of association as one of the important elements of constitutional status of a person is a possibility to freely create associations for the protection of their interests and expression of opinions and convictions, including with the aim to participate in managing state affairs and fulfilment of tasks related to ensuring of human and civil rights and freedoms, as well as freedom of activity of public associations.

The provisions of international-law acts, which are, according to Article 15 (Section 4) of the Constitution of the Russian Federation, an integral part of the legal system of the Russian Federation – the Universal Declaration of Human Rights (Item 1 of Article 20), the International Covenant on Civil and Political Rights (Item 1 of Article 22) and the Convention for the Protection of Human Rights and Fundamental Freedoms (Item 1 of Article 11) in a similar way reveal the content of everyone's right of association with others.

Everyone's right of association, as it is defined by the Constitution of the Russian Federation, is ensured by the state's recognition of wide autonomy of public associations, serving as a form of self-organization within the framework of a civil society, and creation for citizens of real opportunities to strive, by own and joint efforts and with the help of lawful means, for realization of socio-economic, political, cultural, scientific, nature-protective and other programmes initiated by them. Public associations, whose freedom of activity and equality before the law are guaranteed by the Constitution of the Russian Federation, independently choose forms and methods of fulfilment of tasks standing before them, and bodies of public authority, called upon to assist self-organization of citizens, have no right to arbitrarily restrict the activity of public associations and interfere with their affairs, including with regard to appraisal of expediency of directions and content of such activity.

At the same time, as the Constitutional Court of the Russian Federation pointed out, the obligation to observe the Constitution of the Russian Federation and laws, established by Article 15 (Section 2) of the Constitution of the Russian

Federation, fully extends to associations of citizens (rulings of 5<sup>th</sup> February, 2009 No. 247-O-O and of 26<sup>th</sup> January, 2010 No. 155-O-O). Therefore, their formation and functioning must have lawful character and meet the requirements following from the Constitution of the Russian Federation – both from its special provisions, determining objective bounds of normative content of the right of association, including ban on the establishment and activities of public associations whose goals and activities are aimed at the forcible changing of the basis of the constitutional order and at violating the integrity of the Russian Federation, at undermining its security, at creating armed units and at instigating social, racial, national and religious strife (Article 13, Section 5) and the provisions of its Article 55 (Section 3), envisaging the possibility of restriction, side by side with other constitutional rights and freedoms, of the right of association to the extent necessary for the protection of the basis of the constitutional order, morality, health, rights and lawful interests of other people, and for ensuring the defence of the country and the security of the state.

Thus, fixing on the basis of the Constitution of the Russian Federation and taking into account the provisions of international-law acts to which Russia is a party the order of realization of the right of association by its citizens, the federal legislator, to which Articles 71 (Items “a” and “c”) and 76 (Section 1) of the Constitution of the Russian Federation entrust regulation and protection of human and civil rights and freedoms, as well as control over observance of the Constitution of the Russian Federation and federal laws, is called upon not only to create proper conditions for foundation and registration of associations of citizens, determine their legal status, so that, as the Constitutional Court of the Russian Federation pointed out, citizens having united can effectively defend their rights and lawful interests (judgments of 15<sup>th</sup> December, 2004 No. 18-II, of 6<sup>th</sup> December, 2011 No. 26-II, of 24<sup>th</sup> October, 2013 No. 22-II and others), but also to ensure realization of this right in accordance with constitutional requirements, including the requirement of observance of the Constitution of the Russian

Federation and laws by all participants of respective legal relations, including by way of introduction of mechanisms of state control (supervision).

3. The Constitution of the Russian Federation does not directly fix powers, organization and order of activity of the prosecutor's office of the Russian Federation, leaving resolution of these questions to the federal legislator (Article 129, Section 1), and thereby does not exclude principal possibility of investing the prosecutor's office with other functions, going beyond the limits of the criminal law field. Accordingly, the federal legislator, determining the competence of the prosecutor's office of the Russian Federation, cannot but take account of the constitutional-law nature of this state power institute, proceeding among other things from the historically formed understanding of its role and destination in the legal system of Russia and its legal traditions.

Similar approach is reflected in the conclusion of the Consultative Council of European Prosecutors No. 3 (2008) "On the Role of Prosecutor's Office Outside of Criminal Law Sphere", according to which state's choice of one or another model of the prosecutor's office must in any case pursue general and public interests, objects of the protection of human rights and maintenance of the supremacy of law, which requires clear-cut definition of functions and powers of bodies of the prosecutor's office in the law, and prosecutor's fulfilment of his duties must take place on the basis of the principles of legality, objectivity, justice and impartiality.

Entrusting by the Federal Law "On Prosecutor's Office of the Russian Federation" to bodies of the prosecutor's office of public functions connected with exercise on behalf of the Russian Federation, independently of other state bodies, supervision over observance of the Constitution of the Russian Federation and laws operating on the territory of the Russian Federation by all subjects of law named in the said Federal Law is determined, as the Constitutional Court of the Russian Federation pointed out, by the purposes to ensure supremacy of law, unity of legal expanse, strengthening of legality, protection of human and civil rights and freedoms as well as lawful interests of society and the state, which correlates with

the provisions of Articles 2, 4 (Section 2), 15 (Sections 1 and 2) and 18 of the Constitution of the Russian Federation; the requirement of the Constitution of the Russian Federation about observance of human and civil rights and freedoms extends to bodies of the prosecutor's office, and realization by a prosecutor of his powers must not lead to substitution of functions of other bodies of public authority (judgments of 18<sup>th</sup> February, 2000 No. 3-II and of 11<sup>th</sup> April, 2000 No. 6-II, Ruling of 24<sup>th</sup> February, 2005 No. 84-O).

Within the meaning of the adduced provisions of the Constitution of the Russian Federation and legal positions of the Constitutional Court of the Russian Federation based on them, the function of supervision over execution of laws, carried out by the prosecutor's office of the Russian Federation, is an independent (isolated) form of realization of the state's control function, within the framework of which strict observance of the Constitution of the Russian Federation and laws operating on the territory of Russia is ensured by way of timely and efficient reaction of bodies of the prosecutor's office to the known facts of breach of laws of different branches by subjects of law, including those state bodies which are invested with functions of special (departmental) state control (supervision).

Principal requirement of Item 2 of Article 21 of the Federal Law "On Prosecutor's Office of the Russian Federation", according to which when exercising supervision over execution of laws bodies of the prosecutor's office do not substitute other state bodies, underlines exactly extra-departmental and inter-branch character of prosecutor's supervision as an institution destined for universal, permanent and effective protection of constitutionally significant values, and consequently, extending also to those fields of public relations, with regard to which operates special (departmental) state control (supervision). In its interrelations with other state bodies exercising functions of state control (supervision) the prosecutor's office of the Russian Federation has coordinating position, which is determined both by special legal regulation of realization of supervisory functions by it (which general approaches towards organization and

holding of special (departmental) control (supervision) cannot be automatically extended to, including as regards determination of planning, subject-matter of control and supervision activity, powers of subjects exercising it, the degree of legal details of procedural conditions) and a particular organizational and personnel mechanism, called upon to ensure realization of the function of supervision over execution of laws in the system of bodies of the prosecutor's office by persons with high legal qualification, and needs no detailed regulation of the order of realization of supervision functions by them, which is more necessary in respect of other kinds of state control (supervision).

At the same time establishment, in order to provide participants of legal relations in one or another sphere with additional guarantees of their rights and freedoms, of special regulation of the state control (supervision) in some or other branch directions does not mean attributing to these normative provisions the character of uniform and universal rules for all fields of public relations. The Constitutional Court of the Russian Federation proceeded from this, too, when it pointed out with regard to regulation introduced by the Federal Law of 26<sup>th</sup> December, 2008 No. 294-ФЗ “On Protection of Rights of Juridical Persons and Individual Entrepreneurs During Exercise of State Control (Supervision) and Municipal Control” that determination of circle of persons to whom this Federal Law extends is the discretion of the federal legislator and cannot be regarded as violation of constitutional rights of citizens (rulings of 25<sup>th</sup> February, 2010 No. 294-O-O and of 24<sup>th</sup> September, 2013 No. 1339-O).

Thus, the federal legislator, acting within the framework of sufficiently wide discretion and using – with account of economic and social conditions of the state and condition of legality in concrete fields of public relations – combination of general and differentiated approaches to legal regulation of control and supervisory functions and powers exercised by the state bodies, has the right to establish in accordance with requirements of the Constitution of the Russian Federation certain peculiarities of organization and exercise of prosecutor's supervision over

execution of laws, including in the field of activity of non-commercial organizations (associations).

4. The mechanism of realization of control and supervisory functions with regard to non-commercial organizations is determined by their specificity as institutions of civil society, ensuring joint participation of citizens in independent fulfilment of tasks which they put before themselves, and objective diversity of legal relations which non-commercial organizations enter into, often significantly influencing the economic, social, spiritual and cultural development of society and the state.

Since the results of activity of non-commercial organizations, public by nature, may acquire public-law and all-national significance and affect rights and freedoms both of the participants and other persons, and what is more, by virtue of their legal status they can pretend in cases established by law to receive state support to their activity, the federal legislator is entitled to envisage special legal institution, destined to prevent, reveal and cut off breaches of law in the field of activity of non-commercial organizations. Introduction of such special institution, which in the system of operating legal regulation is federal state supervision, also accords with the aim to ensure transparency (openness) of the activity of non-commercial organizations, receiving monetary means and other property from foreign sources and participating on the territory of the Russian Federation in political activity aimed at influencing – directly or indirectly (by way of forming public opinion) – decisions adopted by state bodies and state policy conducted by them (Judgment of the Constitutional Court of the Russian Federation of 8<sup>th</sup> April, 2014 No. 10-II).

Federal state supervision over the activity of non-commercial organizations in accordance with their constitutional destination is entrusted to the Ministry of Justice of the Russian Federation (Item 4<sup>1</sup> of Article 32 of the Federal Law of 12<sup>th</sup> January, 1996 No. 7-ФЗ “On Non-Commercial Organizations”, Resolution of the Government of the Russian Federation of 11<sup>th</sup> July, 2012 No. 705 “On Approval of

the Statute on Federal State Supervision over Activity of Non-Commercial Organizations”), which does not hinder ascription of this activity, as socially and public-law significant, simultaneously to prosecutor’s supervision, within the framework of which are ensured not only timely and adequate reaction, including in an extraordinary (extra-plan) order, to facts of breach of laws by non-commercial organizations, but also proper, legal and well-founded federal state supervision on the part of the Ministry of Justice of the Russian Federation. Thereby maintenance of universal regime of constitutional legality in the activity of non-commercial organizations is guaranteed, based on the principles of supremacy of the Constitution of the Russian Federation and federal laws, observance of human and civil rights and freedoms as a supreme value, obligation to observe the Constitution of the Russian Federation and laws (Article 1, Section 1; Article 2; Article 4, Section 2; Article 15, Section 2; Article 18 of the Constitution of the Russian Federation).

At the same time, when forming control and supervisory mechanism in the field of activity of non-commercial organizations, including determination of concrete correlation and delimitation of federal state supervision over their activity and prosecutor’s supervision over execution of laws by them, the federal legislator must establish rules and procedures, which on the basis of balance of private and public interests will make for achievement of constitutionally significant objects, such as ensuring free self-organization of citizens within the bounds of institutions of civil society and maintenance of legality and legal order, not encroaching upon the very essence of the constitutional right of association, including by way of creating unfounded, surplus and unsurmountable obstacles for realization of this right and freedom of activity of public associations (Judgment of the Constitutional Court of the Russian Federation of 8<sup>th</sup> April, 2014 No. 10-II, Ruling of the Constitutional Court of the Russian Federation of 28<sup>th</sup> June, 2012 No. 1251-O).

Although exercise of control (supervisory) functions by bodies of public authority in itself cannot be fully identified with restriction of human and civil

rights and freedoms within the meaning of Article 55 (Section 3) of the Constitution of the Russian Federation, checkup measures held by them in the procedure of federal state supervision are connected with observance of public law regime of interrelation of checkup bodies invested with coercive-authoritative powers and checked subjects, which some additional burdens may be imposed on, able to somehow complicate realization of their rights, freedoms and lawful interests.

Administrative discretion of checking bodies, objectively characteristic of federal state supervision and not excluding the possibility to use their legal instruments contrary to their public destination, including in certainly understood departmental interests, contemplates the need to ensure within the framework of legal regulation of federal state supervision proper guarantees of rights of citizens and their associations in order to minimize their negative effect without damage to the effectiveness of the conducted checkup measures, irrespective of whether the results of the checkup will require application of measures of state coercion, restricting human and civil rights and freedoms.

Accordingly, legislative regulation of control and supervisory procedures, as well as the activity of state bodies competent to hold checkups, must meet constitutional criteria of possible restrictions of human and civil rights and freedoms, which are fixed in Article 55 (Section 3) of the Constitution of the Russian Federation, and demands to the checked subject during holding of checkup measures appraised from the point of view of their necessity and proportionality, inadmissibility of interference of checking body with operational activity of the checked one, including with account of the results of checkups held earlier both within the framework of a special (departmental) state control (supervision) and prosecutor's supervision.

Thus, the federal legislator, entrusting bodies of public authority with control and supervisory function in respect of non-commercial organizations, is entitled to use a combination of specialized federal state supervision, carried out by an

authorized federal body of executive power, and prosecutor's supervision. At this it must also observe the requirements of certainty, clarity and unambiguity of legal norms and their accordance with the system of operating legal regulation, following from the principles of a law-governed state, most important of which are supremacy of the Constitution of the Russian Federation and laws, equality and justice (judgments of the Constitutional Court of the Russian Federation of 6<sup>th</sup> April, 2004 No. 7-Π, of 31<sup>st</sup> May, 2005 No. 6-Π and of 18<sup>th</sup> July, 2008 No. 10-Π).

5. Exercise of respective control and supervisory functions and powers by bodies of public authority requires appropriate normative grounds, organizational and procedural rules of holding checkup measures, so that checked non-commercial organizations and persons involved in their activity do not constitute the only object of state activity, but have real opportunities for effective, including judicial, protection of their rights and lawful interests, among other things with regard to grounds, character and consequences of actions and decisions of controlling bodies, whereas control and supervision measures themselves must not be too burdensome for non-commercial organizations and groundlessly hinder their normal activity.

Consequently, appraisal of the legal regulation of supervision over execution of laws by non-commercial organizations, carried out by bodies of the prosecutor's office, is impossible without taking account of other legislative regulations, including with regard to the powers of the Ministry of Justice of the Russian Federation as a subject of exercise of federal state supervision over the activity of non-commercial organizations.

5.1. Provisions of Item 2 of Article 1 of the Federal Law "On Prosecutor's Office of the Russian Federation", entrusting the prosecutor's office of the Russian Federation with supervision over execution of laws by governing bodies and heads of non-commercial organizations and conformity of their legal acts with laws, as well as observance of human and civil rights and freedoms by them are in correlation with the provisions of the Federal Law of 19<sup>th</sup> May, 1995 No. 82-Φ3

“On Public Associations”, envisaging exercise by the prosecutor’s office of supervision over observance of laws by public associations (Article 38) and fixing its powers connected with initiating in the established cases suspension and liquidation of a public association (Articles 42 – 44), as well as the provisions of the Federal Law “On Non-Commercial Organizations”, determining the possibility of the prosecutor’s office’s participation in checking measures of control bodies in respect of non-commercial organizations and powers of the prosecutor’s office to appeal to court with application on liquidation of a non-commercial organization (Item 1<sup>1</sup> of Article 18 and Article 32).

Turning to the analysis of the provisions of the Federal Law “On Prosecutor’s Office of the Russian Federation” defining the subject-matter and powers of a prosecutor during supervision over execution of laws, the Constitutional Court of the Russian Federation noted that these provisions – as applied to concrete circumstances having served as reason for petition of citizens and associations of citizens for protection of their rights and freedoms in constitutional proceedings – in themselves cannot be regarded as violating constitutional rights and freedoms (rulings of 27<sup>th</sup> January, 2011 No. 90-O-O, of 19<sup>th</sup> June, 2012 No. 1156-O and others). Noting this, the Constitutional Court of the Russian Federation proceeded from the idea that respective powers of a prosecutor ensure exercise of functions vested in the prosecutor’s office of the Russian Federation, and authoritarian and mandatory character of prosecutor’s demands supported by measures of administrative responsibility is determined by the destination of prosecutor’s supervision, whereas absence of the possibility of compulsion to execution of lawful demands of a prosecutor would not let the prosecutor’s office to effectively fulfil public task entrusted to it.

Conclusions of the Constitutional Court of the Russian Federation, including those confirming sufficiently wide discretionary powers of the federal legislator in establishing prosecutor’s powers, retain their force with regard to the appraisal of the provisions of the Federal Law “On Prosecutor’s Office of the Russian

Federation” being the subject-matter of its consideration in the present case, which allows to recognize these provisions as not contradicting the Constitution of the Russian Federation from the standpoint of their role in the legal mechanism of regulation of functions of supervision over execution of laws entrusted to the prosecutor’s office of the Russian Federation.

At the same time, within the framework of the present case constitutionality of the same legislative provisions is subject to appraisal also from the point of view of their conformity to the constitutional requirement of legal certainty, which petitioners on the present case mainly insist on, connecting violation of their rights and freedoms with incomplete regulation of grounds and procedural conditions of the prosecutor’s office’s checkups of execution of laws by non-commercial organizations, which, as they suppose, leads in practice to arbitrary application of authoritative powers granted to the prosecutor’s office.

Touching upon the questions of legal regulation of the procedural order of carrying out prosecutor’s supervision, the Constitutional Court of the Russian Federation pointed out in the Judgment of 18<sup>th</sup> February, 2000 No. 3-II that in the Federal Law “On Prosecutor’s Office of the Russian Federation”, apart from anything else, there are no provisions that would fix the procedures of general supervision of the prosecutor’s office and guarantees of rights of persons in respect of whom it exercises supervision over execution of laws, which, contrary to the opinion of petitioners in the present case, cannot be regarded as final appraisal of constitutionality of legal regulation of respective relations, so far as peculiarities of the subject of the said Federal Law, following from Article 129 of the Constitution of the Russian Federation, do not predetermine unconditional need to concentrate in it alone the whole mass of norms related to the order of general supervision of the prosecutor’s office and connected with realization of rights, duties and guarantees of the checked subjects.

Such appraisal must be made bearing in mind complex, multi-level character of the Federal Law “On Prosecutor’s Office of the Russian Federation” and in the

interconnection with other federal laws and subordinate normative acts, regulating holding of prosecutor's supervision over execution of laws and fixing legal status of the checked subjects, including non-commercial organizations. One should take into consideration that observance of the requirement of formal certainty of a law, following from the Constitution of the Russian Federation and implying, among other things, normative legal mechanism of the prosecutor's office's realization of powers of exercise of supervision over execution of laws, intelligible for subjects of respective legal relations, is determined both by the content of concrete normative provisions, including the norms of the said Federal Law, and systematic and hierarchical interconnections of various normative prescriptions. As it follows from the legal position, repeatedly expressed by the Constitutional Court of the Russian Federation, the degree of certainty of legal regulation must be appraised by way of revelation of the whole system of interconnections of legal prescriptions and with consideration of peculiarities of the realized rights and lawful interests of citizens.

5.2. According to Item 2 of Article 21 of the Federal Law "On Prosecutor's Office of the Russian Federation", checkups of execution of laws are held on the basis of information about facts of breach of laws received by bodies of the prosecutor's office and requiring prosecutor's measures. Within the meaning of this legislative provision in the interconnection with Article 10 of the said Federal Law, information about facts of breach of laws, serving as ground for taking measures of the prosecutor's reaction, may be contained both in applications, complaints and other petitions received by bodies of the prosecutor's office and considered in the procedure and in terms established by the federal legislation, first of all by the Federal Law of 2<sup>nd</sup> May, 2006 No. 59-ФЗ "On Order of Consideration of Petitions of Citizens of the Russian Federation", and in any open sources.

Taking into account the character of public functions entrusted to the prosecutor's office of the Russian Federation and connected with maintenance of legal order and ensuring of timely restoration of violated rights and lawful interests

of citizens and their associations, it is contemplated that bodies of the prosecutor's office must adequately react with the help of all legal means available to them to revealed facts of breach of laws irrespective of source of information, including information received by the prosecutor independently on lawful grounds. Such approach was reflected in the order of the Prosecutor General of the Russian Federation of 7<sup>th</sup> December, 2007 No. 195 "On Organization of Prosecutor's Supervision over Execution of Laws, Observance of Human and Civil Rights and Freedoms", according to Item 6 of which bodies of the prosecutor's office are charged with holding of checkups of execution of laws on the basis of information received by them (petitions of citizens, officials, reports of mass media, etc.) as well as other materials on committed offences, requiring use of prosecutor's powers, first of all for the protection of universally significant or state interests, rights and lawful interests of groups of the population, labour groups, repressed persons, scanty peoples, citizens in need of particular social and legal protection; in these cases to reasons of prosecutor's checkup are ascribed materials of criminal, civil, arbitration and administrative cases, results of statistical analysis, prosecutor's and law-applying practices as well as other materials, containing sufficient data about breach of laws.

Thus, operating legal regulation admits exercise of prosecutor's supervision over execution of laws not only in connection with specific petitions (so called incidental grounds) and, accordingly, the possibility of holding prosecutor's checkups, including with regard to non-commercial organizations in initiative order is not excluded, grounds and reasons for which nevertheless may not be determined arbitrarily – they must be connected with concrete data, pointing at signs of breach of laws in the activity of a non-commercial organization and its officials, whereas uncertainty as to legal qualification of such facts cannot be removed by interaction of bodies of the prosecutor's office with a state body carrying out federal state supervision over the activity of non-commercial organizations.

Since by virtue of the provisions of Item 2 of Article 21 and Item 1 of Article 22 of the Federal Law “On Prosecutor’s Office of the Russian Federation” bodies of the prosecutor’s office, when exercising supervision over execution of laws do not substitute other state bodies and have the right to demand from heads and other officials of a non-commercial organization holding of checkups on materials and petitions received by bodies of the prosecutor’s office, automatic institution of a prosecutor’s checkup in every case of having concrete data allowing to suppose that a non-commercial organization deviated from requirements of the legislation without preliminary use of possibilities to reveal significant circumstances by way of addressing respective state body would create unfounded obstacles for its normal functioning.

The grounds of prosecutor’s checkup determine the subject-matter and bounds of its holding, in connection with which realization by the prosecutor of his powers granted within the framework of supervisory functions out of the grounds of a specific checkup of execution of laws by a non-commercial organization and its officials is, as a general rule, inadmissible, with the exception of cases when during it signs of other breaches of laws are revealed, whose appraisal can neither be made out of measures of prosecutor’s supervision. And here, since exercise of supervisory function by a prosecutor directly affects rights and freedoms of the checked persons, by virtue of Article 24 (Section 2) of the Constitution of the Russian Federation independent motivated decision should be passed on the beginning of holding of prosecutor’s checkup and on widening its grounds in connection with revealed signs of other breaches of laws; this decision must be brought to the notice of the checked non-commercial organization, at least at the moment of the beginning of the checkup. Other approach would undermine the constitutional principle of maintenance of confidence in actions of public authority being in the basis of mutual relations of person and the state and lead to unfounded encroachment upon state protection of human and civil rights and freedoms guaranteed by the Constitution of the Russian Federation (Article 45, Section 1).

5.3. Within the meaning of the interconnected provisions of Item of Article 6, Item 2 of Article 21 and Item 1 of Article 22 of the Federal Law “On Prosecutor’s Office of the Russian Federation”, demands of the prosecutor, following from his powers of supervision over execution of laws and mandatory for execution, on submission by heads and other officials of a checked non-commercial organization of the necessary documents, materials, statistical and other data must extend, bearing in mind the goals of the checkup measures, only to those documents and materials, study of which is necessary in order to confirm or refute data that is at the disposal of bodies of the prosecutor’s office and served as a ground for the checkup of signs of breach of laws in the activity of this non-commercial organization.

The fact that the said Federal Law does not rigidly link a prosecutor up to any specific form of access to such documents and materials (studying the originals, receipt of copies, etc.) in itself contemplates no possibility of realization of this power by a prosecutor arbitrarily, on subjective discretion, which is confirmed by Item 15 of the Order of the Prosecutor General of the Russian Federation of 7<sup>th</sup> December, 2007 No. 195, restricting bodies of the prosecutor’s office during holding checkups by the ban to demand superfluous materials, documents and data, which can be obtained by prosecutors directly in the course of the checkup on the spot, and by prohibition to impose on the checked organizations and their officials the obligation to submit to bodies of the prosecutor’s office data not related to the subject-matter of the checkup or going beyond its bounds, as well as statistical data not required by the legislation.

Besides, the so called standards of openness (transparency) of activity of non-commercial organizations are envisaged in branches of the legislation, determining the information which should be present and is subject, including on a regular basis, to disclosure by non-commercial organizations: constituent documents, data on personal composition of governing bodies, documents on the purposes of spending monetary means and other property, including those received from

foreign sources, book-keeping and statistical records within the bounds set by special legislation, etc. (Article 32 of the Federal Law “On Non-Commercial Organizations”, Articles 21 and 29 of the Federal Law “On Public Associations”).

Taking into account the expounded normative requirements and bearing in mind that the character and degree of burdens imposed on a checked non-commercial organization must correlate both with objectives of effective fulfilment of task of prosecutor’s supervision and with the need to maintain normal working regime of the non-commercial organization itself, prosecutor’s demand of submission by its heads and other officials of concrete documents and materials related to the checkup should be regarded as lawful, if such documents and materials cannot be obtained from other state bodies or from open sources and were not handed over earlier within the framework of this prosecutor’s checkup, whereas bodies of the prosecutor’s office have no right to request documents, which a non-commercial organization is not obliged to have in accordance with the legislation, including to demand forming of documents which are absent at the moment of bringing this demand forward, which does not exclude their voluntary submission, as well as there is not excluded request to submit documents, concerning the activity of a checked organization on the territory of the Russian Federation, composed in a foreign language, in translation into Russian.

5.4. When appraising the provisions of the Federal Law “On Prosecutor’s Office of the Russian Federation” under consideration with regard to periodicity (frequency) of conducting checkups of execution of laws by non-commercial organizations by bodies of the prosecutor’s office, one must take into account peculiarities of its legal nature, determined by inter-branch, over-departmental and universal character of prosecutor’s supervision, as they are reflected in the system of operating legislation.

So far as bodies of the prosecutor’s office may hold in respect of a non-commercial organization respective checkups in connection with received data on signs of breaches of laws, including supposed breaches committed during checkups

by other state bodies, performing functions of state control (supervision), tying prosecutor's supervision up with approaches to planning of checkup measures, which are applied to special (departmental) forms of supervision and control activity, including extension to it of principles envisaged by the Federal Law "On Protection of Rights of Juridical Persons and Individual Entrepreneurs During Exercise of State Control (Supervision) and Municipal Control" would lead to formal restriction of possibilities of adequate and timely prosecutor's reaction to the known facts of breach of laws by non-commercial organizations, which would not answer the character and destination of prosecutor's supervision.

Besides, with account of the requirement of subject certainty of every single prosecutor's checkup and bearing in mind the obligation of bodies of the prosecutor's office to give on the outcome of checkup measures legal qualification of data pointing at signs of breach of laws in the non-commercial organization's activity, having served as grounds for prosecutor's supervision, repeated holding of checkup measures in respect of this non-commercial organization (i.e. in connection with the same facts which were already legally qualified or must have been legally qualified on the outcome of earlier checkup, without any new or newly discovered facts) would lead to unfounded and excessive restriction of a non-commercial organization's activity, which is incompatible with constitutional principles of interrelations of institutions of civil society and public authority and contradicts purposes of prosecutor's supervision following from the Federal Law "On Prosecutor's Office of the Russian Federation".

At the same time, holding in a reasonable time after the initial prosecutor's checkup, on the outcome of which breaches of laws were revealed in the activity of a non-commercial organization, of a checkup of their removal seems well-founded, since at another approach, contemplating leaving the question of fulfilment by a non-commercial organization of measures to put its activity in accordance with requirements of the legislation to the discretion of the non-commercial organization itself, effectiveness of prosecutor's supervision as such would be

called in question and, as follows from the Judgment of the Constitutional Court of the Russian Federation of 17<sup>th</sup> March, 2009 No. 5-II, the possibility of control over body of the prosecutor's office which conducted the initial checkup by a higher-ranking body would be excluded.

As to granting a prosecutor the right to demand allocation of both staff-members of the checked non-commercial organization itself and representatives (staff-members) of other state bodies for the most rational organization and timely completion of supervisory measures, it gives, contrary to the assertion of petitioners in the present case, no grounds to bodies of the prosecutor's office and Ministry of Justice of the Russian Federation to hold joint checkups, increasing thereby, bypassing the legislation in force, the number of checkups which can be held in respect of a non-commercial organization within the framework of federal state supervision over its activity.

Recruiting by the prosecutor of representatives (staff-members) of a body, authorized to carry out federal state supervision over the activity of non-commercial organizations, to participation in the checkup of execution of laws by a concrete non-commercial organization is determined by the need to attribute to these detached persons legal status of experts competent to resolve questions which have arisen or may arise in the course of prosecutor's checkup, and does not entail its character as conducted exactly in the procedure of prosecutor's supervision realized by bodies of the prosecutor's office. Participation of representatives (staff-members) of other state bodies in prosecutor's checkup is admitted in order to realize auxiliary (expert-analytic) functions and does not contemplate independent checkup actions by them in the interests of respective state bodies, as well as other deviations from the restrictions of periodicity of the conducted routine control measures in respect of non-commercial organizations, established by the legislation.

This conclusion does not place in doubt coordinating role of the prosecutor's office of the Russian Federation in the field of state control (supervision) and does

not exclude establishment of legal regulation, within the framework of which it is possible to carry out coordinated (joint) control and supervisory measures by bodies of the prosecutor's office and other state bodies invested with functions of state control (supervision) in respect of non-commercial organizations with observance of requirements brought forward to respective state bodies of special (departmental) state control (supervision).

5.5. According to legal position expressed by the Constitutional Court of the Russian Federation in the Judgment of 18<sup>th</sup> February, 2000 No. 3-II, the Constitution of the Russian Federation does not contemplate that everyone's right to receive information directly affecting his rights and freedoms, as well as the obligation of bodies of state power and their officials to provide everyone with respective data, can be completely excluded, – on the contrary, under all conditions the established bounds of restriction of this right, determined by the content of the information, must be observed; therefore, information received during supervision by bodies of the prosecutor's office over execution of laws, which, proceeding from the Constitution of the Russian Federation and federal laws, may not be ascribed to data of limited access, by virtue of the direct force of Article 24 (Section 2) of the Constitution of the Russian Federation must be available to citizen if collected documents and materials affect his rights and freedoms, and the legislator envisages no special legal status of such information in accordance with constitutional principles, substantiating the need and proportionality of its particular protection.

It follows from the provisions of Items 1 and 2 of Article 1, Articles 4, 21 and 22 of the Federal Law “On Prosecutor's Office of the Russian Federation” in the interconnection with the provisions of its Articles 23 – 25<sup>1</sup> that holding of prosecutor's checkup is called upon to eliminate uncertainty with regard to concrete data which bodies of the prosecutor's office have, pointing at signs of breach of laws in the activity of a non-commercial organization, and issue on its outcome, if respective breaches are confirmed, an act of prosecutor's reaction in

the form of a protest, report, resolution or warning on inadmissibility to break laws. Item 16 of the Order of the Prosecutor General of the Russian Federation of 7<sup>th</sup> December, 2007 No. 195 obliges prosecutors to formulate in the acts of prosecutor's reaction legal essence of the revealed breaches of laws with indication of their negative consequences, reasons and conditions which contributed to them, to raise question on their elimination and responsibility of guilty persons, as well as to take part in consideration of acts of prosecutor's reaction.

It is contemplated thereby that the result of a prosecutor's checkup, connected with revelation of breaches of laws in the activity of a non-commercial organization, is subject to drawing up in the form of one or another act of prosecutor's reaction and bringing to the notice of the checked organization, which conforms to Item 4 of Article 5 of the Federal Law "On Prosecutor's Office of the Russian Federation", guaranteeing familiarization of a citizen with checkup materials, directly affecting his rights and freedoms. Absence in the said Federal Law of direct indication of the need to draw up the results of a prosecutor's checkup having revealed no breach of laws in the form of a separate act does not release the prosecutor from the need to adopt respective decision on its outcome and bring it to the notice of the checked non-commercial organization, since without such decision prosecutor's checkup cannot be regarded as completed in formal legal sense, and this could allow a prosecutor, contrary to the goals of prosecutor's supervision, to use his authoritative powers in respect of a non-commercial organization for an indefinitely long time.

5.6. The right of everyone to protection in court of his rights and freedoms and the right to appeal in court against decisions and actions (or inaction) of bodies of state power, bodies of local self-government, public organizations and officials come out, as the Constitutional Court of the Russian Federation repeatedly pointed out, as guarantee in respect of all other constitutional rights and freedoms and are not subject to restriction; the state must ensure full realization of the right to court protection, which should be just, competent and effective; the right to appeal

against any legal act with the exception of acts, whose review is ascribed by the legislator to exclusive competence of the Constitutional Court of the Russian Federation, is ensured by the review based on the civil procedure and arbitration procedure legislation as well as Article 3 of the Law of the Russian Federation of 27<sup>th</sup> April, 1993 No. 4866-I “On Appeal to Court against Actions and Decisions Violating Rights and Freedoms of Citizens”.

Having envisaged the possibility of exercise of supervisory powers by bodies of the prosecutor’s office in respect of non-commercial organizations, the federal legislator did not specify directly in the Federal Law “On Prosecutor’s Office of the Russian Federation” any special procedure with regard to the order and conditions of court review of legality of prosecutor’s decisions adopted on the outcome of checkup measures, which, however, does not mean taking prosecutor’s supervision over execution of laws out of the sphere of judicial control.

So far as measures of prosecutor’s supervision touch on interests of the checked non-commercial organization and may be accompanied by disputes as to legality of decisions adopted during prosecutor’s checkups and actions (as well as inaction) carried out by respective bodies and officials, existence of the mechanism of effective judicial control of legality of such decisions and actions (inaction) acquires significance of one of the most important guarantees of observance of the constitutional-law regime of carrying out prosecutor’s supervision and serves as a factor of maintaining confidence in the interrelations of civil society and the state. Proceeding from this, absence in the Federal Law “On Prosecutor’s Office of the Russian Federation” of special norms regulating the rights of non-commercial organizations during prosecutor’s checkups of execution of laws by them does not call in question the need to ensure to those organizations, whose rights and lawful interests were affected by measures of prosecutor’s supervision, guarantees of timely and effective court protection of their rights.

In spite of the fact that courts are not authorized to verify expediency of decisions of bodies of the prosecutor’s office, which act within the framework of

discretionary powers afforded to them by law, the need to ensure the balance of private and public interests during prosecutor's supervision as a sphere of authoritative activity of the state contemplates the possibility to verify legality of respective decisions adopted in the course of measures of prosecutor's supervision on holding of prosecutor's checkups, submission of documents and materials, etc. As follows from the interconnected provisions of Articles 46 (Section 1), 52, 53 and 120 of the Constitution of the Russian Federation, destination of judicial control as a means to settle legal disputes on the basis of independence and impartiality predetermines the right of a non-commercial organization to turn to court for the protection against possible arbitrary law enforcement.

This approach is in the basis of the legal position of the Constitutional Court of the Russian Federation, by virtue of which the request of officials of bodies of the prosecutor's office on submission of the necessary data and documents may be questioned according to the rules of Chapter 25 of the Civil Procedure Code of the Russian Federation, as well as other decisions, actions (inaction) of the said officials, which are not subject to questioning in criminal judicial proceedings and in the proceedings on cases on administrative offences; when a case on questioning the legality of decisions and actions (inaction) of a prosecutor or a case on administrative offence, having expressed itself in intended non-execution of a prosecutor's demands following from his powers set by the law (Article 17.7 of the Administrative Offences Code of the Russian Federation) is considered in court, the prosecutor must prove lawfulness of his demands and the fact of breach of a law by a body or official whom respective demands were brought forward to (rulings of 24<sup>th</sup> February, 2005 No. 84-O and of 16<sup>th</sup> February, 2012 No. 270-O-O). Similar position is expressed in Item 3 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 10<sup>th</sup> February, 2009 No. 2 "On Practice of Court Consideration of Cases on Questioning of Decisions, Actions (Inaction) of Bodies of State Power, Bodies of Local Self-Government, Officials, State and Municipal Servants".

The Federal Law “On Prosecutor’s Office of the Russian Federation”, connecting goals of activity of bodies of the prosecutor’s office with protection of human and civil rights and freedoms (Item 2 of Article 1), proceeds from the idea that exceeding by bodies of the prosecutor’s office of their powers or their use contrary to lawful objective and protected rights and interests of citizens, organizations, state and society is incompatible with the conditions of admissible restrictions of human and civil rights and freedoms following from the principles of a law-governed state (Article 1, Section 1; Article 55, Section 3, of the Constitution of the Russian Federation).

6. The legal position of the Constitutional Court of the Russian Federation, by virtue of which the federal legislator, when entrusting bodies of public authority with control function and investing them with powers to act in the authoritative and binding manner must observe the requirements of certainty, clarity, unambiguity of legal norms and their concordance with the system of operating legal regulation, following from the principles of law-governed state, extends also to legal regulation of terms, during which demands of the state bodies exercising the function of state control (supervision) are subject to fulfilment, as well as the terms of holding control and supervisory measures. This conforms to the conclusion to which the Constitutional Court of the Russian Federation came with regard to discretion of the federal legislator in regulating terms of holding checkup measures and rules of their calculation, which, as pointed out in its Judgment of 16<sup>th</sup> July, 2004 No. 14-II, is predetermined both by the need to guarantee fulfilment of duties entrusted by the law to respective subjects and inadmissibility of creation of conditions for violation of their constitutional rights and freedoms.

As follows from the interconnected provisions of Item 1 of Article 6 and Article 22 of the Federal Law “On Prosecutor’s Office of the Russian Federation”, prosecutor’s demands, connected with holding checkups in order of supervision over execution of laws in respect of non-commercial organizations, are subject to unconditional fulfilment in an established term. Breach of this prescription,

contemplating guilty non-observance by the checked non-commercial organization and its officials of the term allotted for fulfilment of prosecutor's demands, is the ground for making them administratively answerable by way of special procedures – passing by the prosecutor himself of a resolution on instituting proceeding on administrative offence and sending it to court (Ruling of the Constitutional Court of the Russian Federation of 24<sup>th</sup> February, 2005 No. 84-O), entailing application of measures of state coercion in accordance with Article 17.7 of the Administrative Offences Code of the Russian Federation and, consequently, restriction of constitutional rights and freedoms of these persons.

Obliging non-commercial organizations to unconditional fulfilment of prosecutor's demands in an established term, neither the Federal Law “On Prosecutor's Office of the Russian Federation” itself nor other normative acts define its duration and order of calculation, therefore law-applying bodies, including courts, interpret the provisions of Item 1 of Article 6 and Article 22 of the Federal Law “On Prosecutor's Office of the Russian Federation” as allowing the prosecutor himself to establish this term each time individually. Thereby in the law-applying practices (which is confirmed by materials submitted to the Constitutional Court of the Russian Federation by petitioners in the present case) unlimited prosecutor's discretion in determining terms of fulfilment of duties imposed on the checked non-commercial organization and its officials, including the duty to submit necessary documents and materials, whereas the fact itself of deviation from these terms, irrespective of the character and amount of the demands brought forward, may entail administrative responsibility envisaged by Article 17.7 of the Administrative Offences Code of the Russian Federation.

Meanwhile, prosecutor's possibility to arbitrarily establish time borders of fulfilment of his demands and thereby on his own discretion to determine in this respect the order of realization of authoritative powers invested in him does not conform to the principle of coherence of bodies of the prosecutor's office by law, following from the Constitution of the Russian Federation, its Articles 1 (Section

2), 2, 10, 11 (Section 1), 15 (Sections 1 and 2), 18 and 129, and creates conditions for violation of constitutional rights of non-commercial organizations and persons connected with their activity as a result of imposition on them of demands of the prosecutor objectively unrealizable in the established term, whose legality, in the absence of normatively formalized criteria of determination of this term, cannot be exposed to effective judicial control.

Neither does the Federal Law “On Prosecutor’s Office of the Russian Federation” limit total (maximum) duration of checkup measures held in the order of supervision over execution of laws by non-commercial organizations. Touching on this question with regard to the appraisal of legal regulation of terms and duration of measures of state control (supervision) in the form of field tax examinations, the Constitutional Court of the Russian Federation proceeded from the idea that any tax examination – field or cameral (the order of calculation of the term of their conduction may vary depending on character and level of influence of specific checkup measures on the activity of the checked) – must be in any event limited in time, because other, i.e. unlimited in duration, character of the examination is incompatible with the requirements of proportionality of state control (supervision) to constitutionally significant goals, following from Article 55 (Section 3) of the Constitution of the Russian Federation (Judgment of 16<sup>th</sup> July, 2004 No. 14-II).

Lack of regulation of the issue of total (maximum) duration of checkups of execution of laws by non-commercial organizations, though they have mainly documentary (cameral) character, engenders legal uncertainty as to the duration of application of the regime of such checkup, connected with additional burdens for a non-commercial organization, and allows to determine it in each concrete case according to arbitrary discretion of a prosecutor on the basis of his own subjective assessment, proceeding from the results of checkup measures, which puts the non-commercial organization and persons connected with its activity to an inadmissible position with regard to realization of the constitutional right of association from the

point of view of the requirements of Articles 18, 19 (Sections 1 and 2), 46 (Sections 1 and 2) and 55 (Section 3) of the Constitution of the Russian Federation.

Proceeding from the above and guided by Articles 6, 71, 74, 75, 78, 79, 80, 87 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 interconnected provisions of Item 1 of Article 6, Item 2 of Article 21 and Item 1 of Article 22 of the Federal Law “On Prosecutor’s Office of the Russian Federation” as not contradicting the Constitution of the Russian Federation insofar as these provisions, as fixing prosecutor’s power to demand during holding of checkups in the order of exercise of supervision over execution of laws unconditional submission by heads and other officials of non-commercial organizations of necessary documents, materials, statistical and other data, ensure execution by the prosecutor’s office of the Russian Federation of the function of supervision entrusted to it as an activity determined by its destination by the requirements of the Constitution of the Russian Federation, and are aimed at ensuring of legality, state and public security, protection of rights and freedoms of other people and other constitutionally significant values.

2. To recognize the interconnected provisions of Item 1 of Article 6, Item 2 of Article 21 and Item 1 of Article 22 of the Federal Law “On Prosecutor’s Office of the Russian Federation” as not contradicting the Constitution of the Russian Federation to the extent to which these provisions within their constitutional-law meaning in the system of operating legislation, including the one regulating exercise of federal state supervision over the activity of non-commercial organizations by Ministry of Justice of the Russian Federation:

contemplate holding by bodies of the prosecutor’s office of checkups of execution of laws by non-commercial organizations within the bounds of a certain

subject-matter of a concrete checkup, determined by data pointing at signs of breaches of laws in the activity of a non-commercial organization and its officials, which cannot be confirmed or refuted in the course of inter-departmental interrelation with a state body carrying out federal state supervision over the activity of non-commercial organizations, with passing of motivated decision thereof, subject to bringing to the notice of the checked non-commercial organization at least at the moment of the beginning of the checkup;

contemplate possibility of prosecutor's request from the heads and officials of a non-commercial organization of documents and materials, directly determined by the purposes and subject-matter of a concrete checkup, impossible to be received from other state bodies or open sources and having not been handed over to bodies of the prosecutor's office in connection with earlier checkup of execution of laws by this non-commercial organization, and do not oblige the non-commercial organization to submit documents which it is not obliged to have in accordance with the legislation as well as form documents absent by the moment of bringing forward the prosecutor's demand;

do not admit holding by bodies of the prosecutor's office in respect of a non-commercial organization of a repeated checkup, carried out in connection with facts pointing at supposed breach of laws, which were already legally qualified or must have been legally qualified on the outcome of an earlier checkup, with the exception of the checkup of elimination of breach of laws held within a reasonable term after their revelation;

contemplate possibility of recruiting of representatives (staff-members) of other state bodies in the checkup of execution of laws by a non-commercial organization only in order to realize auxiliary (expert-analytic) functions, which excludes independent checkup actions by them on behalf and within the framework of competence of respective state bodies and does not admit other deviations from the order and periodicity of the routine control measures held by authorized bodies of state control (supervision), established by the legislation;

oblige bodies of the prosecutor's office to approve on the outcome of the checkup of execution of laws by a non-commercial organization an act, containing ascertainment of presence or absence of breach of laws in its activity, in connection with which prosecutor's checkup took place, and to bring such act to the notice of the checked non-commercial organization;

contemplate court examination on the application of a non-commercial organization of legality measures of prosecutor's supervision in respect of it, decisions adopted during these measures as well as actions (inaction) connected with them, while the burden of proof of lawfulness of holding of the checkup and demands brought forward lies on the prosecutor.

The constitutional-law meaning of the said legislative provisions, revealed in the present Judgment, shall be generally binding and excludes any other interpretation of them in the law-applying practices.

3. To recognize interconnected provisions of Item 1 of Article 6 and Item 1 of Article 22 of the Federal Law "On Prosecutor's Office of the Russian Federation" as not conforming to the Constitution of the Russian Federation, its Articles 18, 19 (Sections 1 and 2), 46 (Sections 1 and 2) and 55 (Section 3), to the extent to which these provisions, in breach of the requirements of formal certainty of a law, establish no total (maximum) terms of holding by bodies of the prosecutor's office of checkups of execution of laws by non-commercial organizations, as well as, envisaging unconditional fulfilment of prosecutor's demands following from his powers of holding checkups of execution of laws within an established term, breach of which in the system of operating legal regulation contemplates administrative responsibility, do not regulate concrete terms of fulfilment of such demands.

4. The federal legislator, guided by the requirements of the Constitution of the Russian Federation and legal positions of the Constitutional Court of the Russian Federation based on it and expressed in the present Judgment, must make amendments to legal regulation of relations connected with exercise of bodies of

the prosecutor's office of supervision over execution of laws, among other things to determine maximum terms of holding checkup measures and terms of fulfilment by checked organizations of prosecutor's demands following from his powers to submit necessary documents, materials, statistical and other data.

Until making appropriate amendments to the legislation in force, reasonableness of these terms shall be confirmed or refuted by courts when considering respective disputes, bearing in mind that the burden of proof lies on the prosecutor. At this, the Federal Law "On Protection of Rights of Juridical Persons and Individual Entrepreneurs During Exercise of State Control (Supervision) and Municipal Control" must have orientating importance when resolving questions connected apart from anything else with determination of terms of submission of documents necessary for holding of checkup of execution of laws by a non-commercial organization to the prosecutor.

5. Law-applying decisions passed on cases of the Interregional Association of Human Rights Protective Public Associations "AGORA", Interregional Public Organization "Human Rights Protective Centre "Memorial", International Public Organization "International Historical-Enlightening, Charitable and Human Rights Protective Society "Memorial", Regional Public Charitable Organization to Help Refugees and Forced Migrants "Civic Assistance", Autonomous Non-Commercial Organization for Legal, Information and Expert Services "Zabaikal'sky Human Rights Protective Centre", Regional Public Foundation "International Standard" in Republic of Bashkortostan and S.A.Gannushkina on the basis of the provisions of Item 1 of Article 6, Item 2 of Article 21 and Item 1 of Article 22 of the Federal Law "On Prosecutor's Office of the Russian Federation" in the interpretation diverging from their constitutional-law meaning revealed in the present Judgment or on the basis of Item 1 of Article 6 and Item 1 of Article 22 of the said Federal Law to the extent they have been recognized by the present Judgment as not conforming to the Constitution of the Russian Federation are subject to reconsideration provided there are no other obstacles to it

6. The present 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 officials.

7. The present Judgment is subject to immediate publication in Rossiyskaya Gazeta, the Collection of Laws of the Russian Federation and the official Internet-portal of legal information ([www.pravo.gov.ru](http://www.pravo.gov.ru)). The Judgment shall also be published in the Bulletin of the Constitutional Court of the Russian Federation.

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