

By the Judgment of 17th February, 2015 No. 2-II/2015 the Constitutional Court gave appraisal 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 accordance with the contested interconnected provisions bodies of the Prosecutor’s Office, within the framework of supervision over observance of laws by non-commercial organizations, hold checkups, during which prosecutor’s demands following from his powers are subject to unconditional execution; carrying out supervision over the observance of laws by non-commercial organizations, bodies of the Prosecutor’s Office do not substitute other State bodies; a prosecutor is entitled to verify observance of laws in connection with the information received by bodies of the Prosecutor’s Office on the facts of breach of law requiring undertaking of measures by the prosecutor and to demand from heads and other officials of the examined organization to submit the necessary documents, materials, statistical and other data as well as to recruit representatives (staff-members) of other State bodies to participate in verification events.

The Constitutional Court recognized the contested legislative provisions as not contradicting the Constitution of the Russian Federation, so far as they ensure fulfillment by the Prosecutor’s Office of the Russian Federation of the function of supervision placed on it as an activity determined by its destination by 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 persons as well as other constitutionally-significant values.

The Constitutional Court recognized the contested legislative provisions as not contradicting the Constitution of the Russian Federation also to the extent to which they:

contemplate holding by bodies of the Prosecutor’s Office of checkups within the bounds of certain subject of a particular checkup, determined by the presence of a data pointing at signs of breach of laws in the activity of a non-commercial

organization and its officials, which cannot be confirmed or refuted in the course of the inter-departmental interaction with a State body exercising federal State supervision over the activity of non-commercial organization (Ministry of Justice of the Russian Federation) with passing of motivated decision on this, subject to be brought to the notice of the examined organization at least at the moment of commencement of the checkup;

contemplate the possibility of prosecutor's request from heads and officials of a non-commercial organization of documents and materials, directly determined by goals and subject of a particular checkup, which cannot be obtained from other State bodies or from open sources and having not been handed over to bodies of the Prosecutor's Office in connection with a checkup held earlier, and do not oblige the non-commercial organization to submit documents which it is not committed to have in accordance with the legislation as well as to form documents absent by the moment of bringing forward of prosecutor's demand;

admit no holding by bodies of the Prosecutor's Office of a repeated checkup, carried out in connection with facts pointing at alleged breaches of laws, which on the outcome of a checkup held earlier legal qualification has been given or should have been given to, with the exception of a checkup of elimination of breaches of laws held within reasonable term after their revelation;

contemplate the possibility to recruit for participation in holding of a checkup representatives (staff-members) of other State bodies solely with the objective of exercising subsidiary (expert-analytic) functions by them, which excludes independent holding of verification actions on behalf and within the framework of competence of respective State bodies and admits no other deviations from the procedure and periodicity of planned events established by the legislation in force and held by competent bodies of State control (supervision);

oblige bodies of the Prosecutor's Office to approve on the outcome of a checkup an act, containing ascertaining of the presence or absence of breaches of laws in the activity of a non-commercial organization, in connection with the

possibility of which prosecutor's checkup was carried out, and to bring such act to the notice of the examined non-commercial organization;

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

At the same time, the 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" have been recognized as not conforming to the Constitution of the Russian Federation to the extent to which they establish no general (maximum) terms of holding checkups by bodies of the Prosecutor's Office as well as do not regulate concrete terms of execution of prosecutor's demands.

Until appropriate legislative amendments are made, reasonableness of these terms shall be confirmed or refuted by courts in the course of consideration of respective disputes, bearing in mind that the burden of proof of their reasonableness lies on the prosecutor. At this, the Federal Law "On Protection of Rights of Juridical Persons and Individual Entrepreneurs when Carrying out State Control (Supervision) and Municipal Control" must have guiding significance when resolving questions connected among other things with determination of terms of submission of documents to a prosecutor necessary for holding of a checkup.