

By the Judgment of 13th December, 2016 No. 28-II/2016 the Constitutional Court gave appraisal of constitutionality of Sub-Item 1 of Article 1301, Sub-Item 1 of Article 1311 and Sub-Item 1 of Item 4 of Article 1515 of the Civil Code of the Russian Federation

The contested provisions were the subject-matter of consideration insofar as they determine court's powers in applying measures of responsibility for an individual entrepreneur's breach of exclusive rights to a work or object of neighbouring rights, as well as to a trademark in the event if the possessor of violated intellectual rights under Item 3 of Article 1252 of this Code uses as the means of defence the right to demand by his choice from the infringer instead of reimbursement of losses payment of a compensation in the amount of 10,000 to 5,000,000 roubles for each unlawfully used result of intellectual activity or means of individualisation equal to it.

The contested provisions have been recognised as not contradicting the Constitution of the Russian Federation as envisaging as special way of protection of exclusive rights to objects of intellectual property granting the right holder the possibility to demand by his choice from the infringer instead of reimbursement of losses payment of a respective compensation in the event of violation of rights to several results of intellectual activity belonging to him or means of individualization as a result of one illegal action committed by the individual entrepreneur.

At the same time, the Constitutional Court has recognised the contested provisions as not conforming to the Constitution of the Russian Federation to the extent to which they do not allow court, in the event of such violation of rights of the right holder, to determine the general amount of compensation lower than a minimum limit established by these legislative provisions, if the amount of compensation calculated under the rules set by these legislative provisions with regard to the possibility of its reduction multiply exceeds losses caused to the right holder (in that these losses give way to calculation with reasonable degree of

authenticity, and their exceeding must be proved by the defendant) and if the circumstances of a specific case testify, in particular, to the fact that the offence has been committed by the individual entrepreneur for the first time and that the use of objects of intellectual property, the rights to which belong to other persons, with violation of these rights was not an essential part of his entrepreneurial activity and was not gross.

Until appropriate legislative amendments have been made, courts, when considering demands of the relief claimed in the procedure of the contested normative provisions, shall apply them following this Judgment.