IN THE NAME OF THE RUSSIAN FEDERATION

The Constitutional Court of the Russian Federation

Judgment

of 19 July 2017 No. 22-II/2017

in the case concerning the review of constitutionality of the provisions of Section 1 and Item 2 of Section 2 of Article 20 of the Federal Law "On Migration Registration of Foreign Nationals and Stateless Persons in the Russian Federation" in connection with complaints of USA nationals N.J.Worden and P.D.Oldham.

The Constitutional Court of the Russian Federation composed of the President V.D. Zorkin, Judges K.V. Aranovsky, A.I.Boitsov, N.S. Bondar, G.A. Gadzhiev, Yu.M. Danilov, L.M. Zharkova, S.M. Kazantsev, S.D. Knyazev, A.N. Kokotov, L.O. Krasavchikova, S.P. Mavrin, N.V.Melnikov, Yu.D. Rudkin, O.S. Khokhryakova, V.G. Yaroslavtsev,

with the participation of representatives of USA nationals N.J.Worden and P.D.Oldham – lawyers S.A.Golubok and M.Yu.Zhirova, Plenipotentiary Representative of the State Duma to the Constitutional Court of the Russian Federation T.V.Kasayeva, Representative of the Council of Federation, PhD in Law Ye.Yu.Yegorova, 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 concerning the review of constitutionality of the provisions of Section 1 and Item 2 of Section 2 of Article 20 of the Federal Law "On Migration Registration of Foreign Nationals and Stateless Persons in the Russian Federation".

The reason for the consideration of the case were complaints of USA nationals N.J.Worden and P.D.Oldham. The ground for the consideration of the case was the discovered uncertainty in the question of whether legislative provisions contested by the petitioners are in conformity with the Constitution of the Russian Federation.

Since both complaints concern 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", has merged cases on these complaints in one proceeding.

Having heard the report of Judge-Rapporteur K.V.Aranovsky, statements of the representatives of parties, interventions by those invited to hearing representatives: M.A.Melnikova from the Ministry of Justice of the Russian Federation, G.V.Maryan from the Ministry of Internal Affairs of the Russian Federation, T.A.Vasilyeva from the Prosecutor General of the Russian Federation, 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. According to Article 20 of the Federal Law of 18 July 2006 No. 109-ФЗ "On Migration Registration of Foreign Nationals and Stateless Persons in the Russian Federation", a foreign national, in the event of his being in the place of stay, must be registered at the place of stay in the order and on conditions, which have been established in accordance with this Federal Law or international treaty of the Russian Federation (Section 1); a foreign national, temporarily living or staying in the Russian Federation, is subject to registration at the place of stay on expiry of seven working days from the day of arrival to the place of stay, with the exception of cases when he is in a hotel or other organization, rendering hotel services, in a sanatorium, rest house, boarding house, camping, on a tourist base, in a children's sanitary camp, medical organization, rendering medical help in

stationary conditions, or is in an organization of social service, or is in an organization of social service providing social services to persons without certain place of residence, or is in an institution executing administrative punishment (Item 2 of Section 2).

Constitutionality of these legislative provisions is contested by USA nationals N.J.Worden and P.D.Oldham, who arrived in the Russian Federation on 8 July 2016 by invitation of the local religious organization "Church of Jesus Christ of Latter-day Saints". On 13 July 2016 they were put on the migration registration at the place (address) of this organization in the city of Samara, but lived in another housing in this city. On 5 August 2016 a police official, having perceived violation by N.J.Worden and P.D.Oldham of rules of the migration registration in the Russian Federation by the fact that they were not registered at the place of stay at the address where the actually lived, drew up records on administrative offence envisaged by Section 1 of Article 18.8 of the Administrative Offences Code of the Russian Federation. On the same day by resolutions of the Samara District Court of the City of Samara N.J.Worden and P.D.Oldham were recognized as guilty of the commission of this administrative offence and each of them was prescribed administrative punishment in the form of administrative penalty of 2000 roubles with administrative eviction beyond the boundaries of the Russian Federation. The Samara Regional Court by decisions of 23 August 2016 left these court acts unchanged. By the Resolution of 16 November 2016 Deputy Chairman of the Samara Regional Court left a complaint, lodged in P.D.Oldham's interests against court acts adopted in his case, without satisfaction.

In the petitioners' opinion, legislative provisions contested by them contradict Articles 18, 19 (Sections 1 and 2), 27 (Section 1), 37 (Section 1), 45 (Section 1), 46 (Section 1) and 55 (Sections 2 and 3) of the Constitution of the Russian Federation, so far as contain uncertain conditions of the migration registration of foreign nationals temporarily staying in the Russian Federation, not allowing them to exactly understand migration rules and their obligations to fulfil them, which creates obstacles in carrying out the right to travel freely and freely to choose the

place of stay for these persons, the right freely to use their labour skills and the right to State, including court, protection and makes possible unlawful discretion in application of measures of administrative liability to them.

Thus, proceeding from the requirements of Articles 3, 36, 74, 96 and 97 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", the interconnected provisions of Section 1 and Item 2 of Section 2 of Article 20 of the Federal Law "On Migration Registration of Foreign Nationals and Stateless Persons in the Russian Federation" are the subject-matter of consideration by the Constitutional Court of the Russian Federation in the present case insofar as on their basis the question is resolved about the place of stay of a foreign national (stateless person), at which he must be registered, and on making him administratively answerable for non-fulfilment of this obligation.

2. In accordance with the Constitution of the Russian Federation, in Russia as a law-governed democratic State, where man, his rights and freedoms are the supreme value (Articles 1 and 2), foreign nationals and stateless persons enjoy rights and bear obligations in the Russian Federation on a par with citizens of the Russian Federation, except in those cases envisaged by federal law or by an international treaty of the Russian Federation (Article 62, Section 3). Such cases, within the meaning of Article 62 (Section 3) of the Constitution of the Russian Federation in the interconnection with its Article 17 (Section 2) and other provisions of Chapter 2 "Human and Civil Rights and Freedoms", only concern those rights and obligations, which arise and are exercised due to special connection between the Russian Federation and its citizens (Judgments of the Constitutional Court of the Russian Federation of 17 February 1998 No. 6-П and of 17 February 2016 No. 5-П, Rulings of the Constitutional Court of the Russian Federation of 30 September 2010 No. 1244-O-O, of 4 June 2013 No. 902-O, of 5 March 2014 No. 628-O and others).

According to Article 27 (Section 1) of the Constitution of the Russian Federation, everyone who is lawfully present on the territory of the Russian Federation has the right to travel freely and freely to choose the place of stay and

residence. The right to free travel is also recognized by acts of international law, including the Convention for the Protection of Human Rights and Fundamental Freedoms, Article 2 of Protocol 4 to which envisages that everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence (Item 1), and no restrictions shall be placed on the exercise of this right other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others (Item 3).

At the same time, as follows from the legal position of the Constitutional Court of the Russian Federation expressed in the Judgment of 17 February 2016 No. 5-П and Ruling of 4 June 2013 No. 902-O, this constitutional right is only guaranteed in the Russian Federation to those persons, who are lawfully present on the territory of the Russian Federation, which correlates with other provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms, including its Articles 3 and 8, as well as with Item 1 of Article 2 of the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in Which They Live (adopted by the UN General Assembly on 13 December 1985), not allowing interpretation of the provisions of the Declaration, which would restrict the right of a State to make laws and rules concerning entry of foreigners and conditions of their stay, or to establish distinctions between its nationals and foreigners or would legalize illegal penetration or presence of a foreigner in a State.

Proceeding from the adduced provisions of the Constitution of the Russian Federation and acts of international law, which by virtue of its Article 15 (Section 4) are an integral part of the legal system of the Russian Federation, the State in the person of the federal legislator, following lawful goals of the migration policy, is entitled to determine both the legal regime of stay (residence) of foreign nationals and stateless persons on the territory of the Russian Federation and measures of

liability for its violation, as well as rules of application of measures of coercion for cutting off offences in the field of migration relations, restoration of violated legal order and prevention of illegal (especially plural and flagrant) attacks on it (Judgments of the Constitutional Court of the Russian Federation of 17 January 2013 No. 1-П, of 14 February 2013 No. 4-П, of 16 February 2016 No. 4-П and of 17 February 2016 No. 5-П).

At this, so far as the Constitution of the Russian Federation, including its Articles 17 (Section 3), 19, 55 (Sections 2 and 3) and 56 (Section 3), only allows the possibility to restrict human and civil rights and freedoms in order to protect constitutionally significant values at fair correlation of public and private interests, means and methods of such protection established by federal law must be determined by its goals and able to ensure their attainment, excluding impairment and disproportionate restriction of respective rights and freedoms (Judgments of the Constitutional Court of the Russian Federation of 18 February 2000 No. 3-П, of 14 November 2005 No. 10-П, of 26 December 2005 No. 14-П, of 16 July 2008 No. 9-П, of 7 June 2012 No. 14-П and of 17 February 2016 No. 5-П).

3. Migration registration of foreign nationals and stateless persons staying in the Russian Federation is carried out in accordance with the Federal Law "On Migration Registration of Foreign Nationals and Stateless Persons in the Russian Federation", adopted in execution of the prescription of Article 29^1 of the Federal Law of 25 July 2002 No. 115-ФЗ "On Legal Status of Foreign Nationals in the Russian Federation", with the aim to create necessary conditions for realization by citizens of the Russian Federation, as well as foreign nationals and stateless persons of their rights and freedoms and fulfilment of their duties, elaboration and realization of the State migration policy, formation of full, authentic, efficient and actual information about transferences of foreign nationals and stateless persons in order to forecast consequences of these transferences and conduct State statistical supervision in the field of migration, to plan territorial development, for management in crisis situations, as well as for the protection of the basis of the constitutional system, morals, health, rights and lawful interests of citizens of the

Russian Federation and foreign nationals and stateless persons present in Russia, for the ensuring of national security of the Russian Federation and public security by means of counteraction against illegal migration and other unlawful occurrences, systematization of the data about foreign nationals and stateless persons staying in the Russian Federation (including their personal data), fulfilment of other socio-economic and socio-political tasks (Section 1 of Article 4).

Achievement of these objects – bearing in mind that the migration registration, in accordance with Section 2 of Article 4 of the Federal Law "On Migration Registration of Foreign Nationals and Stateless Persons in the Russian Federation", has notifying character, except for cases envisaged by a federal constitutional law or a federal law – decisively depends on whether the participants of legal relations with regard to the migration registration follow the established rules, submit authentic data in time and commit other legally significant actions, as requires Section 1 of Article 7 of this Federal Law. Therefore, as the Constitutional Court of the Russian Federation pointed out in the Judgment of 17 February 2016 No. 5-П, inclusion of rules of the migration registration in the regime of stay (residence) of foreign nationals and stateless persons in the Russian Federation, determining imposition on them of the obligation to appropriately observe these rules, deviation from which can entail adverse legal consequences, does not go beyond constitutionally acceptable bounds, and introduction of administrative liability for non-fulfilment of respective duties, including eviction beyond the boundaries of the Russian Federation as an administrative punishment, has constitutional grounds.

The European Court of Human Rights also believes that the right of authorities to use administrative eviction can be an important means of prevention of serious and repeated violations of the migration order, whose leaving unpunished would undermine respect for the law; in this case the plan of application of national migration legislation, based on sanctions in the form of administrative eviction, in itself causes no questions from the point of view of

observance of Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, not allowing interference by a public authority with the exercise of the right to respect for private and family life, except cases envisaged by the law and necessary in a democratic society; however, meaning attributed to one or another criterion of admissibility of administrative eviction, differs depending on circumstances of a particular case, and discretion of a State has bounds, determined by the obligation to strike a fair balance between interests of an individual and society as a whole (Judgments of 28 June 2011 in the case of *Nunez v. Norway* and of 27 September 2011 in the case of *Alim v. Russia*).

4. Migration registration, following from its aims enumerated in Section 1 of Article 4 of the Federal Law "On Migration Registration of Foreign Nationals and Stateless Persons in the Russian Federation", is called for to reflect the fact of presence of a foreign national (stateless person) at a particular place (address), defined, as applied also to citizens of the Russian Federation, as a place of stay or residence, usually understood as particular premises, and thereby ensure for bodies of public authority, receiving party, as well as other subjects of private legal relations with the participation of a foreign national (stateless person) the possibility of direct contacts with him.

Accordingly, since the migration registration is, as a general rule, a mandatory condition of lawful presence of a foreign national (stateless person) on the territory of the Russian Federation, non-observance of which may entail application of measures of State coercion to him, the Federal Law "On Migration Registration of Foreign Nationals and Stateless Persons in the Russian Federation" obliges a foreign national (stateless person) to be registered at the place of stay in the procedure and on conditions, established in accordance with this Federal Law or international treaty of the Russian Federation (Section 1 of Article 20), and in exercise of the migration registration to submit authentic information and commit other legally significant actions set by this Federal Law, other federal laws and normative legal acts of the Russian Federation adopted in accordance with them (Section 1 of Article 7), i.e. directly indicates a foreign national (stateless person,

temporarily present in the Russian Federation as bearer of the obligation of the migration registration.

At the same time, this Federal Law imposes a number of particular duties also on the receiving party within the framework of the established order of the migration registration: it is the receiving party, to whom a foreign national (stateless person) presents a document certifying his personality, as well as the migration card, which submits to a body of migration registration notification on arrival of a foreign national (stateless person) to the place of stay, except for cases, when documentarily confirmed good reasons hinder it to fulfil this task, and a foreign national (stateless person) must submit respective notification himself or he may do this with written consent of the receiving party, or when he owns a housing on the Russian territory, which he is entitled to claim as the place of his stay, and it is the receiving party which hands over to the foreign national (stateless person) the tear-off part of this notification, the mark of the body of migration registration in which is the confirmation of the fulfilment of actions, necessary for his registration at the place of stay (Sub-Item "a" of Item 1 and Item 2 of Section 2, Sections 3, 3^1, 4 and 7 of Article 22).

As follows from the adduced provisions of the Federal Law "On Migration Registration of Foreign Nationals and Stateless Persons in the Russian Federation" in the interconnection with Section 1 of its Article 24, according to which persons guilty of breach of the legislation on the migration registration are liable in accordance with the legislation of the Russian Federation, in regulation of relations arising in the exercise of the migration registration there is a combination of the obligation of foreign nationals and stateless persons temporarily staying in the Russian Federation to be registered at the place of stay, formulated as a general principle, and particular duties of the party receiving them. Thereby is contemplated the obligation of a foreign national (stateless person) both to commit the necessary actions himself, if it follows from the normative regulation of these relations, and to manifest appropriate interest in necessary actions of the receiving

party, as well as not to change without proper notification of the authorized body the place of stay, where the receiving party has registered him.

At the same time, by virtue of legal principles of fairness and proportionality, liability of a person for non-fulfilment of the obligation to commit certain legally significant actions may have legal grounds if the commission of respective actions has been placed exactly on him. Proceeding from this, Section 2 of Article 24 of the Federal Law "On Migration Registration of Foreign Nationals and Stateless Persons in the Russian Federation" fixes the rule, according to which foreign nationals (stateless persons), not registered at the place of stay, are not subject to liability for breach of rules of the migration registration, except for cases when a foreign national (stateless person) is obliged to inform about the place of his stay himself. This legislative provision, aimed at avoidance of unfair making foreign nationals (stateless persons) answerable for breach of the legislation on the migration registration, nevertheless, bearing in mind the combination of normatively fixed obligations of a foreign national (stateless person) and the receiving party, gives no definite answer to the question whether a foreign national (stateless person) is liable for violation of the rules of the migration registration, if the receiving party has submitted to the body of migration registration notification on his arrival to the place of stay and he was registered, but actually lives in the place, other than the one indicated in the notification.

Placement of liability in such cases exclusively on the receiving party would not be in conformity with the principle of fairness, so far as discrepancy between the addresses of the place of stay and the place of actual residence of a foreign national (stateless person) may be determined not by actions (inaction) of the receiving party itself, but by the behavior of the person invited by it and having not informed it about change of address where he has decided to live, would create additional opportunities for abuse on the part of the foreign national (stateless person), intending to avoid control of the authorized bodies, and would hamper adequate reaction of public authority to his behavior.

Placement of liability in the same cases on a foreign national (stateless person) can also lead to violation of the said principle, so far as his opportunities to control actions of the receiving party in order to ensure appropriate migration registration are fairly limited. In this case effective normative regulation contemplates in application to foreign nationals and stateless persons measures of liability for breach of the regime of stay in the Russian Federation, having expressed itself in the breach of rules of the migration registration, connected with their actual living at an address, other than the one indicated by the receiving party as the place of stay, no elucidation of whether they could, with an appropriate degree of concern and circumspection, realize such non-coincidence.

5. The obligation of foreign nationals (stateless persons) only to stay in premises, the address of which was fixed in submission of respective documents to the body of migration registration, does not form part of the conditions of the migration registration. The presence of such requirement, deviation from which would be regarded as non-observance of rules of migration registration, entailing respective measures of liability, would bind their stay in Russia by excessively rigid restrictions, inadmissible in a law-governed democratic State, and would allow restriction of free travel incompatible with the aim to protect constitutional values and linked with the risk of unpredictable, selective and arbitrary application of measures of State coercion.

At the same time, the Russian Federation may determine in an act of legislation meaningful legal conditions of the presence of foreign nationals and stateless persons on its territory, the observance of which is a confirmation of lawfulness of their stay on the territory of Russia. One of them is possession by a foreign national (stateless person), permanently or for a long time (over three years) living in Russia, of a housing on legal grounds – otherwise, as follows from Sub-Item 9 of Item 1 of Article 9 of the Federal Law “On Legal Status of Foreign Nationals in the Russian Federation”, he may be refused residence permit, and residence permit which he already has may be annulled. However, this requirement does not form part of the regime of temporary stay of a foreign national (stateless

person) in the Russian Federation, as it is defined by Article 5 of the said Federal Law.

By virtue of objective circumstances the place of stay of a foreign national (stateless person), who is in the Russian Federation by invitation of the receiving party and has here no own housing, is determined, as a rule, by the receiving party, which, according to Item 7 of Section 1 of Article 2 of the Federal Law "On Migration Registration of Foreign Nationals and Stateless Persons in the Russian Federation", may be a juridical person, Russian citizen or a foreign national permanently living in the Russian Federation and other subjects, with whom he actually lives or works (stays). In this case it is contemplated that the receiving party, submitting necessary data to the body of migration registration, including the address of temporary stay of the foreign national (stateless person), not only expresses consent for his temporary stay in the Russian Federation in the established form (which follows, in particular, from Section 8 of Article 22 of the said Federal Law), but also takes responsibility upon itself for his accommodation in the place of stay, if according to the conditions of invitation it has taken respective obligation upon itself.

In cases when the place of temporary stay is a housing determined by the receiving party, the presence in it of a foreign national (stateless person) does not mean acquisition by him of independent right to use this housing, which does not diverge from guarantees of protection of housing rights following from the Constitution of the Russian Federation – to the extent they by nature are applicable to foreign nationals and stateless persons temporarily staying in the Russian Federation. Accordingly, accommodation by the receiving party of a foreign national (stateless person) in a housing as a place of stay does not oblige it to formally fix legal grounds, on which, in accordance with Russian civil and housing legislation, arises subjective right to use this housing.

What is more, in the provisions of the Federal Law "On Migration Registration of Foreign Nationals and Stateless Persons in the Russian Federation"

there is no definite normative tie of the place of stay of a foreign national (stateless person) to premises used by him exactly for living.

5.1. Defining the content of the migration registration, the Federal Law “On Migration Registration of Foreign Nationals and Stateless Persons in the Russian Federation” distinguishes registration at the place of residence and registration at the place of stay, which is fixation of data not about living, but presence in the place of stay (Item 6 of Section 1 of Article 2 and Item 1 of Section 4 of Article 4), the ground for registration at which, as follows from Section 1 of its Article 21, serves, if not established otherwise by law, temporary actual stay of a foreign national (stateless person) in a place not being the place of residence for him, and even absence of his place of residence as such. At this for the aims of the Federal Law “On Migration Registration of Foreign Nationals and Stateless Persons in the Russian Federation” the place of stay of a foreign national (stateless person) in the Russian Federation is defined by Item 4 of Section 1 of its Article 2, operating in the wording of the Federal Law of 20 March 2011 No. 42-ФЗ, as a housing which is not the place of residence, as well as other premises, agency or organization, in which a foreign national (stateless person) finds himself and (or) at the address of which he is subject to registration at the place of stay in the order established by this Federal Law (whereas in the wording in effect earlier the place of stay of a foreign national or stateless person in the Russian Federation was defined as a housing or other premises (building, edifice), which in accordance with this Federal Law were not the place of residence of the foreign national (stateless person) and were used by him for living with the consent of the receiving party).

Therefore, at present the notion of the place of stay of a foreign national or stateless person in the Russian Federation contains indication at its link both to housing and other premises, as well as an agency or organization, which are enumerated in Item 7 of Section 1 of Article 2 of the Federal Law “On Migration Registration of Foreign Nationals and Stateless Persons in the Russian Federation” as a receiving party and with which the foreign national or stateless person actually lives or works (stays). Such regulation does not exclude a conclusion that the place

of stay of a foreign national (stateless person) is not equated with the place (address) of his residence, therefore it allows his registration at the place of stay in other places, where he works (stays), i.e. in this interpretation registration of foreign nationals (stateless persons) at the place of stay is not directly connected – unlike registration at the place of residence (and at the place of temporary stay) of Russian citizens and foreign nationals, permanently or temporarily living in Russia, – exclusively with the place of residence.

5.2. Using in Item 4 of Section 1 of Article 2 of the Federal Law "On Migration Registration of Foreign Nationals and Stateless Persons in the Russian Federation" the formulation "other premises, agency or organization in which a foreign national (stateless person) finds himself and (or) at the address of which he is subject to registration at the place of stay in the order established by this Federal Law", the federal legislator further does not clarify, what the term "finds himself" means – is it, as applied to Item 7 of Section 1 of the same Article, only an explanatory amplification to the terms "living" and "work" or it has independent content, implying not only labour, but also other legal relations, contemplating the need for this person to fairly regularly "find himself" at a particular address. Neither do these legislative provisions allow to definitely assert, whether registration of foreign nationals and stateless persons temporarily staying in the Russian Federation is allowed not at the place (address) of their actual living, when such place exists.

As it is pointed out in the Ruling of the Constitutional Court of the Russian Federation of 24 November 2016 No. 2538-O, registration of a foreign national at the place of stay which is an uninhabitable lodging, within the meaning of a number of provisions of the Federal Law "On Migration Registration of Foreign Nationals and Stateless Persons in the Russian Federation", is allowed also in the event if the receiving party is a juridical person, with which a foreign national works. The question of whether such possibility may be extended to other, apart from labour, relations, as well as to cases when a foreign national (stateless person) works at the place where stays the receiving party, and lives in another housing,

granted to him by the receiving party, or when the premises indicated during the migration registration as a place of stay of the foreign national (stateless person) is by its legal regime inhabitable, remains unanswered.

One must bear in mind that, by virtue of Item 5 of Article 5, Articles 13^2 and 13^5 of the Federal Law "On Legal Status of Foreign Nationals in the Russian Federation", a foreign national (stateless person, temporarily staying in the Russian Federation on the ground of a visa, may work in the Russian Federation when given work permit either on application of an employer or customer of works (services) on his recruiting to labour activity as a highly qualified specialist, or when he has been directed by a foreign commercial organization for working in its affiliated organizations, branch offices and representations on the territory of the Russian Federation. Other categories of foreign nationals (stateless persons), temporarily staying in the Russian Federation on the ground of visas granted to them, in particular directed for work in Russia by foreign non-commercial organizations (religious organizations, funds, agencies, etc.) and not being highly qualified specialists, may not be given permit for work in the Russian Federation due to absence of grounds for it. Therefore, as applied to foreign nationals (stateless persons), in respect of whom legal regime of temporary stay in the Russian Federation is used and who, as a rule, are subject to the migration registration not at the place of residence, but at the place of stay, participation in labour relations is not widespread.

Besides, in the Russian legal system the notion "place of stay" is in itself linked with temporary living not at the place of residence. The content of this notion as applied to foreign nationals (stateless persons), as follows from Item 4 of Section 1 of Article 2 of the Federal Law "On Migration Registration of Foreign Nationals and Stateless Persons in the Russian Federation", has been widened as compared with its definition in Paragraph 7 of Article 2 of the Law of the Russian Federation of 25 June 1993 No. 5242-I "On the Right of Citizens of the Russian Federation to Travel Freely, Freely to Choose Place of Stay and Residence within the Bounds of the Russian Federation" with regard to citizens of the Russian

Federation, at the expense of inclusion in it apart from housings of other premises, agency or organization. In this case to organizations, at whose address a foreign national (stateless person) invited by them is subject to registration at the place of stay in the order established by the Federal Law "On Migration Registration of Foreign Nationals and Stateless Persons in the Russian Federation", pertain, according to Item 2 of Section 2 of its Article 20, medical organizations, rendering medical aid in stationary conditions, and organizations of social service, providing social services to persons without certain place of residence, forcibly used by foreign nationals (stateless persons) for satisfaction of basic necessities of life, i.e. as a housing.

Thus, the provisions of Section 1 and Item 2 of Section 2 of Article 20 of the Federal Law "On Migration Registration of Foreign Nationals and Stateless Persons in the Russian Federation" may be understood also as admitting the possibility to put a foreign national (stateless person) temporarily staying in the Russian Federation on the migration registration at the whereabouts of the receiving party – at least, an agency, organization, if legal relations connecting them (is unclear, what exactly, apart from labour ones) contemplate participation in the activity of these agency, organization at their whereabouts, and as obliging to register a foreign national (stateless person, temporarily staying in Russia exclusively at the place of his actual residence, if such place exists.

Court practice (including court acts passed in the petitioners' cases) of interpretation of the notion "place of stay, where the migration registration is carried out" also testifies to the uncertainty of the adduced normative regulation, in the introduction of which the federal legislator was obliged either to take into account the understanding of the place of stay of a natural person or, if with regard to the migration registration it meant something else, to express special character of respective legal relations more precisely and definitely.

With the existing uncertainty of notions appraisal of the fact of living of a foreign national (stateless person) at another address, than the one indicated in the data of the migration registration as the place of his stay, can have different

consequences from the point of view of application of liability measures. If the whereabouts of the receiving party is regarded as the place of stay of a foreign national (stateless person), his actual living out of the place of stay indicated in the data of the migration registration as such is not a ground for changing this data and, therefore, does not oblige to fulfil the prescription of Section 2 of Article 9 of the Federal Law "On Migration Registration of Foreign Nationals and Stateless Persons in the Russian Federation", according to which respective data must be submitted to bodies of migration registration in the event of alteration of the data fixed in the exercise of the migration registration. Another approach, allowing carrying out of the migration registration at the place of stay of a foreign national (stateless person), which is understood as the place of residence, contemplates – in the event of non-coincidence of the place of actual residence with the place where the migration registration has been carried out – appraisal of actions of this foreign national (stateless person) as unlawful and therefore entailing application of legal liability measures to him.

5.3. As the Constitutional Court of the Russian Federation has repeatedly pointed out, the general legal criterion of certainty, clearness and unambiguity of a legal norm, without the observance of which its uniform understanding is impossible and, accordingly, application, follows from the principles of a law-governed State, rule of law and legal equality, fixed in Articles 1 (Section 1), 4 (Section 2), 15 (Sections 1 and 2) and 19 (Sections 1 and 2) of the Constitution of the Russian Federation; poly-semantic, unprecise and contradictory character of legal regulation hinders adequate understanding of its content, allows the possibility of unlimited discretion in the course of law-application, leads to arbitrariness and thereby impairs guarantees of protection of constitutional rights and freedoms.

With uncertainty of the notion "place of stay" used in the Federal Law "On Migration Registration of Foreign Nationals and Stateless Persons in the Russian Federation" – in the context of the general obligation of a foreign national (stateless person) to get registered and particular obligations of the receiving party

to register him at the place of stay established by this Federal Law – the foreign national (stateless person), being deprived of the opportunity to realize the illegal character of his behavior, expressing itself in living in another housing than the one documentarily fixed in his migration registration, risks to be made legally answerable.

Taking into consideration that the migration registration has, in essence, character of notification, the obligation to be registered can be fulfilled by a foreign national (stateless person), and necessary actions – committed by the receiving party: it is only necessary to draw up respective documents and to enter in legal relations with an authorized body. Therefore, with good faith of a foreign national (stateless person) and the receiving party with regard to the observance of migration rules appropriate fulfilment of duties related to the migration registration or non-commission of the necessary actions may by connected not with disproportion of the requirements brought forward to them, but exclusively with insufficiently clear expression of these requirements in the text of the law. Accordingly, in these conditions the provisions of Articles 2, 18 and 55 of the Constitution of the Russian Federation, not allowing in their interconnection interpretation of a law with restrictive (burdening) consequences for human and civil rights and freedoms, including for the right to travel freely, cannot be a criterion of choice of one of its possible interpretations for the law-applier.

As follows from the provisions of Items 4, 6 and 7 of Section 1 of Article 2 and Section 1 of Article 21 of the Federal Law “On Migration Registration of Foreign Nationals and Stateless Persons in the Russian Federation”, if one implies, within the framework of the existing uncertainty of respective legal regulation, the possibility of the migration registration of a foreign national (stateless person) at the whereabouts of the receiving party, and not at the place of his actual residence, such possibility must be determined by the presence of legal relations between them, the subject of which is the participation of the foreign national (stateless person) in the activity of the receiving party, entailing the need to staying at its address, and which, as a rule, are legalized with the receiving party in accordance

with requirements of labour or civil legislation in the interconnection with the legislation on legal status of foreign nationals and are fixed in the respective agreement, which does not exclude for the foreign national (stateless person) the possibility to participate in the activity of the receiving party within the framework of other legal relations, for example if the receiving party is a religious organization.

In this case achievement of objects of the migration registration, enumerated in Section 1 of Article 4 of the said Federal Law is ensured, which comes forward as one of the forms of State regulation of migration processes, in registration of a foreign national (stateless person) not at the place of his actual residence. Other, if we proceed from the possibility to register a foreign national (stateless person) at the address of the receiving party, with which during his stay in the Russian Federation he has no legal relations, contemplating his actual presence at the respective address, would not correspond to aims of the migration registration, and the address indicated in documents of the migration registration would lose practical significance.

6. In cases when the interpretation of a legal norm by official acts of State, including judicial, bodies does not eliminate – as a result of existence of various versions of its interpretation – vagueness of the legal regulation, in resolving the question of which of these versions is applicable for the establishment of rights and duties of participants of respective legal relations, it is necessary to proceed from the constitutional principles of equality and justice, as well as the requirement of formal certainty of norms, in order to avoid breach of basic elements of legal regulation and law application, following from Articles 1 (Section 1), 18, 19 (Sections 1 and 2), 46 (Sections 1 and 2) and 55 (Section 3) of the Constitution of the Russian Federation.

If mutually excluding approaches to the interpretation of one and the same norm, determined, *inter alia*, by its different understanding in comparison with other norms, turn out to be not deprived of legal substantiation within the framework of the model of legal regulation of respective relations, acceptable from

the constitutional point of view, it is not always possible to comprehend the real content of such norm even with the help of appeal to constitutional norms and principles. In such a situation the most correct, and sometimes the only possible way of revelation of the real meaning of the legal regulation, introduced by the legislator and corresponding to his intentions becomes – by virtue of the principle of separation of powers (Article 10 of the Constitution of the Russian Federation) – legislative elaboration of the content of normative prescriptions, whose vagueness (poly-semantic character), unremovable by means of interpretation, creates serious difficulties in the process of their application, and breach of the requirement of certainty of a legal norm, engendering the possibility of its arbitrary interpretation by the law-applier, is in itself enough for the recognition of such norm as not conforming to the Constitution of the Russian Federation.

The adduced legal positions of the Constitutional Court of the Russian Federation, expounded in the Judgments of 20 December 2011 No. 29-П, of 23 December 2013 No. 29-П, of 2 June 2015 No. 12-П and of 25 June 2015 No. 17-П, fully extend to the legal regulation of issues connected with the migration registration of foreign nationals and stateless persons at the place of stay in the Russian Federation. At the same time, since in the system of the effective legal regulation migration registration is, as a general rule, the necessary condition of stay on the territory of the Russian Federation of foreign nationals and stateless persons and in order to avoid violation both of rights of these persons and the interests of the society and the State protected by means of the migration registration, the Constitutional Court of the Russian Federation deems it possible to establish temporary – until the insertion of necessary amendments to the legislation on the migration registration following from the present Judgment – order of application of respective legislative provisions.

Proceeding from the expounded above and guided by Articles 6, 71, 72, 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 o l d s:

1. To recognize the provisions of Section 1 and Item 2 of Section 2 of Article 20 of the Federal Law “On Migration Registration of Foreign Nationals and Stateless Persons in the Russian Federation” as not conforming to the Constitution of the Russian Federation, its Articles 19 (Sections 1 and 2), 27 (Section 1), 55 (Section 3) and 62 (Section 3) to the extent to which – in the interconnection with other provisions of this Federal Law – they contain uncertainty both in the question of whether registration at the whereabouts (address) of the receiving party is admissible and in what cases in respect of a foreign national (stateless person) temporarily staying in the Russian Federation and in the question of how do correlate duties in the field of the migration registration of the foreign national (stateless person), temporarily staying in the Russian Federation and the receiving party with regard to ensuring his registration exactly at the place (address) where he must be registered at the place of stay in accordance with the established order, whereas breach of the established order may entail making the foreign national (stateless person) legally answerable.

2. The federal legislator must – proceeding from the requirements of the Constitution of the Russian Federation and bearing in mind legal positions of the Constitutional Court of the Russian Federation, expounded in the present Judgment, – to immediately take measures to eliminate uncertainty of normative content of Section 1 and Item 2 of Section 2 of Article 20 of the Federal Law “On Migration Registration of Foreign Nationals and Stateless Persons in the Russian Federation”.

3. Until the necessary amendments following from the present Judgment have been made to the Federal Law “On Migration Registration of Foreign Nationals and Stateless Persons in the Russian Federation”:

in resolving the question of the choice of the place of registration at the place of stay of a foreign national (stateless person), as well as in appraising of presence in his actions of signs of breach of the regime of stay (residence) in the Russian

Federation, the provisions of Section 1 and Item 2 of Section 2 of Article 20 of the said Federal Law may not be regarded as obliging the foreign national (stateless person), temporarily staying in the Russian Federation and registered at the whereabouts (address) of the organization (receiving party) which invited him, legal ties with which, based on the provisions of the legislation of the Russian Federation, is not lost by him during stay in the Russian Federation, to be registered at the whereabouts (address) of the housing which the receiving party has granted to him and in which he temporarily lives;

in all other cases foreign nationals and stateless persons must, if in the said Federal Law other rules of the migration registration are not directly indicated, get registered at the place of stay in the place of their actual residence.

4. Law-applying decisions in cases of the USA nationals Nathanael Joseph Worden and Patrick Drake Oldham, based on the provisions of Section 1 and Item 2 of Section 2 of Article 20 of the Federal Law "On Migration Registration of Foreign Nationals and Stateless Persons in the Russian Federation" to the extent to which these provisions have been recognized by the present Judgment as not conforming to the Constitution of the Russian Federation, are subject to reconsideration in the established procedure in accordance with the criteria determined in the present Judgment.

5. 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.

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

The Constitutional Court
of the Russian Federation