

By the Judgement of 7 February 2023 No. 6-II the Constitutional Court assessed the constitutionality of Article 61¹¹, item 12, sub-item 1 of the Federal Law “On Insolvency (Bankruptcy)” and Article 3, item 3¹ of the Federal Law “On Limited Liability Companies”

These legal provisions have been the subject of consideration to the extent that on their basis the question of the distribution of the burden of proof of the presence (absence) of grounds for bringing to subsidiary liability in a dispute on one side of which is a person or persons engaged in entrepreneurial activities and who are creditors of a limited liability company (debtor), and on the other side - the person controlling the company, if the bankruptcy proceedings of the latter are terminated without the procedures applied in such case (before the first procedure is introduced) due to the lack of funds sufficient to reimburse the legal costs of their implementation, and later this company is excluded from the Unified State Register of Legal Entities as inactive, although at the time of its exclusion the relevant creditor's claims were satisfied by the court is resolved.

The challenged legal provisions were found not to contradict the Constitution of the Russian Federation, because their constitutional and legal meaning in the system of current legal regulation implies that if the court, upon application of a creditor engaged in entrepreneurial activities, to impose subsidiary liability on persons who control the debtor - limited liability company, in the above circumstances will establish bad faith behavior of controlling persons in the process, while the bad faith of procedural behavior of the creditor itself is not established, these rules apply on the assumption that the guilty actions (inaction) of these very persons led to the inability to fulfill obligations to the creditor, until on the basis of the actual circumstances of the case it is not proved otherwise.