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To whom now it is impossible to create a legal entity?

The constitutional court finally approved: a temporary ban on the creation of new legal entities and participation in the management of already existing legal entities for unfair citizens to the Constitution.

Definition No. 580-On from 13.03.2020 G. (published 06.04.2020 g) the constitutional court refused to consider the complaint of the citizen which challenged the constitutionality of subparagraph "f" of paragraph 1 of article 23 of the Federal law from 08.08.2001 № 129-FZ "On state registration of legal entities and individual entrepreneurs".

The applicant was appointed liquidator of the company, however, FNS has denied he was refused entering information in the register about him as liquidator, and here's why: prior to filing of documents for the liquidation of this LLC, he was a member and liquidator of the other two non-performing organizations with debt, what is manifest dishonesty of the applicant. Due to the fact that the three-year period from the date of exclusion from the register of those organizations at the time of filing of documents for the liquidation of the LLC has not expired, the Applicant refused to make information in the register about him as the liquidator. FNS referred to in the above subparagraph of the Federal law "On state registration of legal entities and individual entrepreneurs".

Disagreeing with this position, the citizen went to court to challenge the decision of the FTS, as stated, that the liquidation actions by the old organizations took place before the entry into force of the subparagraph "f" of paragraph 1 of article 23 of the Federal law "On state registration of legal entities and individual entrepreneurs" (until 1 January 2016), however, the arbitration courts were in agreement with the FTS.

And the constitutional court finally confirmed the legality of the actions of the Federal tax service.

The constitutional court gave the following explanations: the contested ban on the creation of new legal entities, as well as to participate in the management of existing ones, is one of the mechanisms to ensure reliability of the data contained in EGRUL and is aimed at those individuals who evaded established by law, actions for termination of activities of a legal entity.

In addition, this provision can not be regarded as "unconstitutional" restriction of citizens' rights, due to the fact that the rule applies only to unscrupulous people within the carry out registration procedures.

Also, the constitutional court noted that under the General rules of the law applies to relations which appear after the introduction of the law itself, and only the legislator has the ability to pay act on the relationships that already existed prior to the enactment of the law. Therefore, due to the importance of protecting the rights and legitimate interests of participants in civil turnover from the actions of unscrupulous persons in the framework of registration procedures both before 01.01.2016 and after, the application of the impugned norm on relations preceding the introduction of the norm does not violate the law Constitution.

Summarizing: the Constitutional Court approved the practice of applying a ban on the creation of legal entities and participation in the management of existing legal entities, taking into account the events preceding the introduction of this ban. In addition, it was noted that this rule cannot be challenged in terms of violation of the rights of a citizen, since it applies to the actions of unscrupulous persons in a particular sphere and is aimed at protecting the rights and legitimate interests of other participants in this sphere.

Practice areas

DISPUTE RESOLUTION

Locations

RUSSIA

