The St. Petersburg city court

Registration № 33-4870/2014 Judge: Moroz A.V.

APPEAL DECISION

The Judicial Panel on civil cases of the Saint Petersburg city court, with following members:

Chairperson: Gavrilova N.V.

Judges: Salnikova V.Yu. and Marina I.L.

Secretary: Panchenko D.P.

Has considered the appeal petition of the NGO Antidiscrimination Center “Memorial” in an open court session on April 8 2014, on the decision of the Leninsky District court of Saint Petersburg on December 12 2013 on the civil case number №2-18З5/13 on the suit of the prosecutor of the Admiralty District of St. Petersburg in defense of an undefined group of persons against the charitable private organization defending the rights of persons experiencing discrimination, the Antidiscrimination Center Memorial, on the decision to compel the defendant to fulfill designated obligations and collection of government fees.

Having heard the statement of the judge Gavrilova N. V. and statements of the prosecutor Yakovleva Ya.S., and prosecutor Smirnov D.I. representing the plaintiff, and the representatives of the defendant, attorneys Tseytlina O.P. and Koroteeva K.N., the judicial panel has DETERMINED:

The prosecutor of the Admiralty District of St. Petersburg has petitioned the court with aforementioned claims to protect the interests of the undefined group of persons, referring to the fact that in the course of an inspection of the defendant’s adherence to the laws on noncommercial organizations it has been determined that ADC Memorial edits and publishes publically disseminated materials,

specifically there has been brought to light a publication in the form of a report titled “Roma, Migrants, Activists: Victims of Police Abuse”, St. Petersburg 2012; of which the print run, according to the contract between the defendant and the LLC “Edelweis” consists of 400 copies; this report has been made available free of charge to visitors of ADC Memorial premises, occupied by the defendant at the following address: 25/14 7th Krasnoarmeyskaya Street, St. Petersburg, Russia; additionally, materials are published on the ADC Memorial website on the Internet.

The report contains conclusions regarding active legislation and current government policies, with recommendations to repeal a number of federal laws and regional laws, and provides justifications for conducting politically motivated activities by political activists, including the organization of mass riots with a political agenda;

The publication contains recommendations on conducting a series of political actions directed at government agencies of the Russian Federation; recommendations for International Organizations and Foreign Intergovernmental Organizations concerning the need to demand the signing and ratification of legally binding agreements by the Russian Federation, including those concerning juvenile justice and expansion of the rights of LGBT community; changing existing legislation; and expressing disapproval of the actions taken by government forces to uphold the law during political protests.

Referring to these circumstances as showing evidence of the defendant’s conducting political activity using funding from foreign sources, the prosecutor requested the court to declare the defendant’s activities to be activities of an NGO functioning as a foreign agent, and to compel the defendant to submit an application to be listed in the register of NGOs functioning as foreign agents, as per the Federal Law “On noncommercial organizations”.

As the defendant makes use of the logo with the joined capital letters “A D C” and vertical inscription “Memorial”, and as this logo has not been legally registered, the plaintiff requested that the defendant be compelled to submit necessary documents to register the organization’s logo.

By the decision of the Leninsky District court of Saint Petersburg on December 12 2013, on the case filed by the prosecutor of the Admiralty District of Saint Petersburg in defense of the interests of a group of unnamed persons, the activity of the charitable private organization defending the rights of individuals experiencing discrimination, the Antidiscrimination Center Memorial has been declared an NGO functioning as a foreign agent.

The NGO Antidiscrimination Center Memorial is obligated to submit an application to be listed in the register of NGOs functioning as foreign agents to the Ministry of Justice of the Russian Federation within two weeks from the date of the decision becoming legally binding.

Likewise, the NGO Antidiscrimination Center Memorial is obligated to submit necessary documents to register the logo with the joined capital letters “A D C” and vertical inscription “Memorial”, according to the procedures outlined in the Administration regulations on the provision of governmental services by the Ministry of Justice of the Russian Federation of the federal registration of NGO logos and symbols of public organizations, by the legal mandate of the Ministry of Justice of the Russian Federation on February 1 2012 № 10, within two weeks of the decision becoming legally binding.

The defendant was compelled to pay a government fine in the sum of 600 rubles into the budget of the city of Saint Petersburg.

In the appeal the defendant seeks to have the court decision repealed as illegitimate, and to declare a new decision to dismiss the charges brought by the prosecutor; refers to the wrongful use of the law “On noncommercial organizations”; considers the court decision on the defendant fulfilling the functions of a foreign agent to be wrongful; considers the influence of the report made available by the ADC Memorial on the formation of public opinion to be unsubstantiated; points to the illegality of conducting a prosecutor’s investigation; the lack of appropriate consideration of the court’s decisions; the absence of a logo in need of registration; and the infringement of the rights of the organization.

During the hearing by the judicial panel, the representatives of the defendant supported the appeal petition.

Third parties were not present during the hearing, but were duly informed of the hearing; The Ministry of Justice of the Russian Federation petitioned for the case to be heard in the absence of a representative. Under the given circumstances, considering the Article 167 of the Civil Procedural Code of the Russian Federation, the judicial panel considers appropriate to hear the case in the absence of third parties. Having investigated the evidence of the case and discussed the arguments made in the appeal petition, the judiciary panel does not see any basis for repealing the original decision on the case.

The provisions in Article 10 of the Convention for the Protection ofHuman Rights and Fundamental Freedoms, signed in Rome on November 4 1950, guarantee the freedom of expression and freedom of assembly and association; however it is specified that the presence of such freedoms carries with it duties and responsibilities, and may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary

Article 1 of the Federal Code from January 12 1996 № 7 “On noncommercial organizations” (with amendments and addendums) determines the legal status and the procedure of creation, activity, reorganization, and dissolution of noncommercial organizations as legal entities; the formation and use of property of noncommercial organizations; the rights and responsibilities of their founders and participants; the basics of management of noncommercial organizations; and the possible options of their support by government agencies and by local regional governments.

Noncommercial organizations can be created for the fulfillment of social, charitable, cultural, educational, scientific, and management goals, for protection of public health, development of physical culture and sports, fulfillment of spiritual and other non-material needs of citizens, defense of the rights and the lawful interests of citizens and organizations, conflict resolution, provision legal aid, as well as other goals, aimed at attaining a public good (point 1 and 2 Article 2 of the law).

As per point 6 Article 2 of the law, a noncommercial organization functioning as a foreign agent under the current Federal law is a Russian noncommercial organization which receives monetary funds and other goods from foreign countries, their governmental agencies, intergovernmental or international organizations, foreign citizens, individuals without citizenship or from their agents, and/or from Russian entities receiving monetary funds and other goods from such sources (with the exception of public companies with government participation and their daughter companies) (further- foreign sources), and which participates in political activity conducted on the territory of the Russian Federation in the interests of foreign sources among others.

A noncommercial organization, with the exception of political parties, is considered to be participating in political activity on the territory of the Russian Federation, if regardless of the goals and objectives stated in its charter documents, it participates (including through financing) in the organization and conducting of political actions with the aim of influencing decisions made by government agencies, directed at changing their government policy, and also in formation of public opinion with the stated goals.

Activity in the areas of science, culture, art, health, preventative care and protection of public health, social aid and citizen protection, protection of mothers and children’s rights, support of the disabled, promotion of healthy lifestyle, physical culture, and spots, protection of flora and fauna, charitable work, as well as work in the aid of charity and volunteerism, are not considered political activities (point 6 enacted by Federal Law on July 20 2012 №12).

Thus the basic attributes necessary for acknowledging an organization to be a foreign agent are: receiving of funds from international sources (directly or indirectly), and participation in political activity as defined by law.

By evidence presented to the court, it has been determined that the charitable private organization defending the rights of persons experiencing discrimination, the Antidiscrimination Center Memorial, according to the Charter from March 14 2007, is a noncommercial organization, with goals of enacting functions of noncommercial nature, namely enacting charitable activities and other programs directed at defending the rights of individuals who have experienced discrimination.

The defendant has published the report titled “Roma, Migrants, Activists: Victims of Police Abuse”, St. Petersburg 2012. The printing was conducted by the LLC “Edelweis”, according to the order contract made with the defendant on September 7 2012. Payment for this order was made by the defendant. The print run consisted of 400 copies (case file page 148-152 t.1).

During inspection conducted by the plaintiff it was determined that materials published in the report were offered freely available free of charge to visitors of ADC Memorial at their premises located at the following address: 25/14 7th Krasnoarmeyskaya Street, St. Petersburg, Russia; additionally, materials of the report were published on the ADC Memorial website www.adcmemorial.org under the tab “HR reports”. Payment and registration of the website was made by the defendant.

The report was prepared and released with financing of the Swedish International Development Cooperation Agency (Sida), as stated in the report itself. In trial court the defendant did not contest receiving funds from international organizations in 2012-2013 totaling 7.3 million rubles (case file page 51 t. 2).

Based on the contents of the report, contained resolutions therein on the rightfulness of politically motivated actions of individuals involved in mass riots in the course of political protests, recommendations on conducting a series of political actions with the goal of changing or abolishing existing legislation, ratification of international legislature, adopting effective measures aimed at protection of foreign nationals (labor immigrants) from the arbitrary actions of state bodies and law enforcement agencies, amongst which are the Federal Migration Service, Federal Bailiff Service, and the Ministry of the Interior, and recommendations on altering of existing legislature,

The trial court (court of first instance) has reached the justifiable conclusion that the development and publication by the defendant’s organization of the stated report, giving the author’s opinion on questions of public life, government organization, current government policy, and the decisions undertaken by government agencies and the way they are carried out, which was made available to an unspecified number of individuals, is aimed at forming public opinion regarding issues of the political life of state and society, which gives reason to recognize the NGO ADC Memorial as being active in politics, and considering the circumstances of its receiving monetary funds from foreign sources, recognize it to be a noncommercial NGO, fulfilling the role of a foreign agent, as per article 6, page 2 of the Federal Law “On noncommercial organizations”.

The court’s decision is based on both the content of the report prepared and published by the defendant, and on the directed activity of the defendant, aimed at reaching certain goals, after considering the development strategy of ADC Memorial for 2012-2013, as supplied to the court by the defendant itself.

The defendant’s disagreements with the court’s decision are based on reinterpreting the evidence used in the trial court’s decision, and can’t be taken into account as a basis for repealing the decision made on the case. There is no basis for a reinterpretation.

The judicial panel finds the arguments of the defense on the absence of political activity by the NGO due to their not participating in political actions defined by the law “On noncommercial organizations” as “political acts” and thus not to be applicable to the defendant to be baseless, because according to the law, a noncommercial organization is considered to be politically active on the territory of the Russian Federation not only when it participates in organizing and conducting political actions with the aim of influencing decisions by government agencies in order to change state policies, but also participates in influencing public opinion with that goal.

The recognition of NGO ADC Memorial to be involved in political activity is determined by establishing its involvement in forming public opinion with the goals stated above.

The judicial panel agrees with the position of the court regarding conclusions supplied with the case of the socio-humanitarian research, political research, and legal research, obtained outside of the court.

Explanations of Rukinov, B.A., Dubrovsky D.V., and Belorukova E.B. do not demonstrate groundlessness of the court’s decision regarding the involvement of the defendant in political activity.

In accordance with Article 67 of the Civil Procedural Codex of the Russian Federation, the court judges evidence by its personal opinion, based on multifaceted, complete, objective and immediate research of the existing evidence, considers the relevance, acceptability, and veracity of each piece of evidence separately and also the completeness and mutual connections between pieces of evidence together.

The judicial panel considers the stated demands to be fulfilled by the court during decision-making of the statements of the identified individuals.

Because the defendant’s activity is recognized to be the activity of a noncommercial organization acting as a foreign agent, the obligation by the defendant to submit an application to be included in the registry of NGOs functioning as foreign agents to the Ministry of Justice of the Russian Federation, is in accordance with the clause on page 7, Article 32 of the Federal Law “On noncommercial organizations”.

Submission of the application for the listing in the registry of NGOs functioning as foreign agents is aimed at fulfilling the demands of the law, and does not result in the curtailment of the rights of the defendant or in any loss, does not limit the defendant’s actions according to the goals and objectives of its charter, nor the freedom of expression of opinion, and as a result, the defendants arguments on the violation of its rights, including on the necessity of fulfilling the reporting demands for NGOs functioning as foreign agents, cannot be admitted as valid.

The case documents show that the defendant’s organization makes use of the logo consisting of the joined capital letters “A D C” and vertical inscription “Memorial”. The right to use a logo which has been registered according to proper procedure is protected by point 1.9 of the Defendant Code. The logo is used in a series of documents by the NGO ADC Memorial. The logo has not been registered by the defendant according to the law.

Given this, it is justified to compel the defendant to submit application documents to register the logo with the joined capital letters “A D C” and vertical inscription “Memorial” according to the procedures outlined in the Administration regulations on the provision of governmental services by the Ministry of Justice of the Russian Federation of the federal registration service of NGO logos and symbols of public organizations, approved by the mandate of the Ministry of Justice of the Russian Federation on February 1 2012 №10. The defendant’s arguments that the defendant does not have a logo appear unconvincing.

The defendant’s arguments regarding the circumstances of conducting the inspection were evaluated by the trial court, and cannot be taken into account as a basis for repealing that court’s decision.

The presence of sanctions for unlawful actions, including those provided by the administrative law codex, does not preclude the demands to end the unlawful actions through legal suits, which is fully lawful in accordance with Article 12 of the General Codex of the Russian Federation, which defines methods of protecting the rights of citizens, due to which the judicial panel is unable to take into account the defendant’s references to the decision made by the Leninsky District court of Saint Petersburg on October 7 2013 not to change the ruling of the magister of the court to turn back the decisions to sue ADC Memorial for breaking administrative laws (case file page 181-189 t.2).

The defendant’s arguments regarding the prosecutor having no right to litigate were considered by the court in its decision on September 23 2013 (case file page 19 t. 2). The arguments mentioned are in conflict with the [message] of Article 45 of the Civil Procedural Codex of the Russian Federation, according to which, the prosecutor has the right to petition the court to defend the rights, freedoms, and lawful interests of citizens, of undefined persons, or the Russian Federation. The prosecutor’s petition with the present requests is in agreement with [] of the aforementioned [], is directed towards preventing/liquidating the breaking of the law by the defendant, which, considering the goals of that institution’s activities, concerns the interests of an undefined group of persons.

Request for conducting expert investigation was lawfully denied by the court, because the questions of applying to the defendant of articles of the Federal Law “On noncommercial organizations” has a legal basis.

The Federal Law “On noncommercial organizations” has not been repealed, is active on the territory of the Russian Federation, and needs to be obeyed.

The defendant’s arguments on discrimination of the institution are baseless, as shown by fulfillment of all requirement.

The abuse of the defendant’s rights, including those of international law, has not occurred.

The courts decisions are based on multifaceted, compete, and objective research of the arguments of both sides, and evidence submitted, the consideration of lawfulness of which was given taking into the account the rules of Article 67 of the Civil Procedural Codex of the Russian Federation and is in accordance with the conditions of the case, the norms of laws which regulates contested interactions.

The decision made by the court is lawful and legitimate and the Article330 of the Civil Procedural Codex of the Russian Federation justifications for repeal are absent.

Based on Article 328 of the Civil Procedural Codex of the Russian Federation, the judicial panel has DECIDED:

The decision of the Leninsky District court of Saint Petersburg on December 12 2013 to remain unchanged, and the appeal unfulfilled.