ARBITRATION COURT OF THE VORONEZH REGION
IN THE NAME OF THE RUSSIAN FEDERATION

DECISION

Voronezh Case No. A14-2670 / 2014
May 20, 2014

The Arbitration Court of the Voronezh Region, composed of Judge Pimenova T.The., Having examined in the order of Art. 226-228 APC RF case upon the application of a Closed Joint Stock Company
"QUANT-TELECOM" (PSRN 1073667031030 INN 3662124236) Voronezh k
Territorial Administration of the Federal Service for Financial and Budgetary Supervision in the Voronezh Region (OGRN 1043600058281 TIN 3666115240) Voronezh on the recognition of illegal the resolution of 20.02.2014 No. 20-14 / 37 on bringing to administrative responsibility,

found:

- Closed Joint Stock Company KVANT-TELECOM (hereinafter referred to as ZAO KVANT-TELECOM or the applicant) applied to the arbitration court to declare illegal and annul the decision of the Territorial Administration of the Federal Service for Financial and Budgetary Supervision in the Voronezh Region (hereinafter referred to as TU FSFBN for Voronezh region or an administrative body) dated February 20, 2014 No. 20-14 / 37 on bringing him to administrative responsibility on the grounds of Part 6.2 of Art. 15.25 Administrative Code of the Russian Federation in the form of a fine of 20,000 rubles.
- By the definition of March 14, 2013, the application was left without movement.
- By a court ruling dated March 27, 2014, the application was accepted and assigned for consideration by way of simplified proceedings.
- The applicant and the TU FSFBN for the Voronezh region of the acceptance of the application in the simplified procedure were duly notified. Additional documents submitted by the parties were posted on the official website of the Arbitration Court of the Voronezh Region in the manner prescribed by par. 2 hours 4 tbsp. 228 APC RF.
- From the materials of the case it was established that in the period from 02/03/2014 to 02/21/2014, on the basis of the order of the head of the TU FSFBN in the Voronezh region
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- Koloskova N.V. dated January 22, 2014 No. 28r in accordance with clause 5.14.1 of the

Regulations on the territorial bodies of the Federal Service for Financial and Budgetary Supervision, approved by order of the Ministry of Finance of Russia dated July 11, 2005 No. 89n, an audit was carried out for residents and non-residents to comply with the acts of currency legislation of the Russian Federation and acts of foreign exchange regulation authorities at ZAO QUANT-TELECOM.

- During the audit, the administrative body established that on August 16, 2012, between KVANT-TELECOM CJSC (resident, customer) and Kazakhtelecom JSC (non-resident, executor), an agreement No. 13-P4732 / 12 on interconnection was concluded (hereinafter - the contract), in accordance with section 2 of which the subject of the agreement is the mutual provision of communication services by the Parties through an organized junction of the communication networks of the Parties and the determination of the conditions for interaction of the Parties in the process of operator activities.
- By virtue of clause 1 of the said agreement "Contractor" - the party providing communication services; Customer - a party purchasing communication services.
- By clause 2.2 of contract No. 13-P4732 / 12 dated 16.08.2012, the parties agreed that in accordance with the terms of this contract and on the basis of orders, the Contractor provides the Customer, and the Customer accepts and pays for communication services.
- The Kazakhtelecom network connects to the QUANT-TELECOM network at the Russian-Kazakhstan border, on the Uralsk (Kazakhstan) section - n. Ozinki (Russia, Saratov region) (clause 2.3 of contract No. 13-P4732 / 12 of 08.16.2012).
- In accordance with clause 7.2 of the agreement, the prices for the services of the parties under this agreement are indicated in Euros or US dollars. The payment currency is indicated in the order.
- Section 8 of the said contract agreed that if the order and / or Appendices No. 5, 6 to this contract with a description of the service do not specify otherwise, the payment for the cost of communication services is made by the Customer as follows:
- - 100% of the cost of the connection service is paid by the Customer in advance within 10 working days from the date of entry into force of the order. The original invoice is sent to the Customer together with the original Order, a copy of the invoice is sent by fax (clause 8.1 of the agreement).

- payment of the monthly cost of the service is made by the Customer at the end of the reporting month on the basis of copies of invoices sent to the Customer by fax and / or e-mail before the 5th day of the month following the reporting month. Invoices are paid

The customer within 10 working days from the moment he receives copies of invoices (clause 8.2 of the agreement)

By virtue of clause 8.7 of Agreement No. 13-P4732 / 12 dated 16.08.2012, bills for communication services are paid in euros or US dollars to the account of the Contractor. The costs of transferring funds are charged to the Customer.

Agreement No. 13-P4732 / 12 of 08.16.2012 comes into force from the date of its signing by the

last of the parties and is valid until its termination on the initiative of one of the parties in accordance with clauses. 11.1, 11.2 of the agreement (clause 3.1 of the agreement).
Under the said agreement, KVANT-TELECOM CJSC on 12.11.2012 issued the CENTRAL-CHERNOZEMNOE BANK, a branch of SBERBANK OF RUSSIA,
transaction passport No. 12110003/1481/0314/9/0.
According to the bank control sheet for PS No. 12110003/1481/0314/9/0 as of 02/03/2014, KVANT-TELECOM CJSC provided services under contract No. 13-P4732 / 12 of 08.16.2012 for the period from 30.11.2012 year until 31.12.2013 for a total amount of 4 384 800 US dollars in accordance with fourteen acts of acceptance and transfer of services.
Kazakhtelecom JSC, on account of the execution of contract No. 13-P4732 / 12 dated 16.08.2012, in the period from 23.11.2012 to 21.01.2014, in fifteen payments transferred funds to the account of the executor in the total amount of 5,364,000 US dollars.
Documents confirming the provision of services under contract No. 13-P4732 / 12 dated August 16, 2012 in January 2013 (act No. KM00000037 dated January 31, 2013) and a certificate of supporting documents were submitted by CJSC QUANT-TELECOM to the CENTRAL-CHERNOZEMNYY BANK OJSC "SBERBANK OF RUSSIA" 03/21/2013.
The untimely submission to the authorized bank of the above documents (the delay was 28 days) by KVANT-TELECOM CJSC violated the requirements of clause 2, part 2 of Art. 24 of the Federal Law of 10.12.2003 No. 173-FZ
"On currency regulation and currency control", clauses 9.1.3, 9.2.2 of the Instruction of the Bank of Russia dated 04.06.2012 No. 138-I "On the procedure for the submission by residents and non-residents to authorized banks of documents and information related to currency transactions , the procedure for issuing passports of transactions, as well as the procedure for accounting by authorized banks of foreign exchange transactions and control over their implementation. "

In this regard, the administrative body saw in the actions of KVANT-TELECOM CJSC signs of an administrative offense under Part 6.2 of Art. 15.25 Administrative Code of the Russian Federation.

02/18/2014 an official of the TU FSFBN in the Voronezh region within the powers provided for in paragraph 80 of part 2 of Art. 28.3 of the Code of Administrative Offenses of the Russian Federation, in the absence of a properly notified CJSC “QUANT-TELECOM” a protocol was drawn up on an administrative offense No. 20-14 / 37 on the grounds of Part 6.2 of Art. 15.25 Administrative Code of the Russian Federation.

Based on the materials of the administrative case, the deputy head of the TU FSFBN in the Voronezh region within the powers established by part 2 of Art. 23.60 of the Code of Administrative Offenses of the Russian Federation, on February 20, 2014, in the absence of a duly notified legal representative of the legal entity, issued a resolution No. 20-14 / 37 on bringing KVANT-TELECOM CJSC to administrative liability under Part 6.2 of Article 15.25 of the Code on Administrative Offenses of the Russian Federation, and imposing an administrative penalty in the form of an administrative fine in the amount of 20,000 rubles.

On February 20, 2014, the administrative body also issued a submission to eliminate the causes and conditions conducive to the commission of an administrative offense, in accordance with which it proposed to take measures to prevent further violations of acts of currency legislation of the Russian Federation and acts of currency regulation, namely: to develop a system of effective control over compliance the established deadlines for the submission of accounting and reporting forms for foreign exchange transactions, supporting documents and

information in the implementation of foreign exchange transactions, as well as notify the TU FSFBN for the Voronezh region of the measures taken in accordance with this submission in writing with the attachment of properly executed documents confirming its implementation, within a month from the date of receipt of this submission.

The decision and submission of 02/20/2014 No. 20-14 / 37 on the elimination of the reasons and conditions conducive to the commission of an administrative offense was handed to the applicant on 03/12/2014, which was confirmed by a receipt on the receipt of the postal item.

Disagreeing with the said decision, KVANT-TELECOM CJSC applied to the court with this statement, citing the absence of direct intent in committing an offense, disproportionate punishment to the committed act. At the same time, the fact of committing an administrative offense is not disputed by him.

In addition, he considers the committed offense insignificant and asks to apply the norms of Art. 2.9 of the Code of Administrative Offenses of the Russian Federation, limiting ourselves to oral remarks.

The TU FSFBN for the Voronezh Region in the submitted responses considers the contested decision to be lawful. At the same time, he refers to the fact that the offense committed by the applicant encroaches on ensuring the implementation of a unified state monetary policy, as well as the stability of the Russian currency and the stability of the domestic foreign exchange market of the Russian Federation as factors of the progressive development of the national economy and international economic cooperation, and also poses a threat to public relations in the sphere of the state's implementation of currency regulation and currency control.

In connection with the above, he considers it impossible to apply the norms of Art. 2.9 of the Administrative Code of the Russian Federation on the insignificance of the offense.

After examining the materials, and evaluating on the basis of Art. 71 APC RF all the evidence in their totality, the court comes to the following.

The procedure for currency regulation and currency control is established by Federal Law No. 173-FZ of December 10, 2003 "On Currency Regulation and Currency Control" (hereinafter - Federal Law No. 173-FZ), the purpose of which is to ensure the implementation of a unified state currency policy, as well as stability the currency of the Russian Federation and the stability of the internal currency market of the Russian Federation as factors of the progressive development of the national economy and international economic cooperation.

Part 2 of Article 5 of Law No. 173-FZ stipulates that in order to implement the functions provided for by this Law, the Central Bank of the Russian Federation and the Government of the Russian Federation issue, within their competence, acts of currency regulation bodies, which are binding on residents and non-residents.

According to part 4 of Article 5 of the said Law, the Central Bank of the Russian Federation establishes uniform forms of accounting and reporting on foreign exchange transactions, the procedure and terms for their submission, as well as prepares and publishes statistical information on foreign exchange transactions.

It follows from part 3 of article 23 of Law No. 173-FZ that the procedure for submitting supporting documents and information to authorized banks by residents and non-residents when carrying out currency transactions is also established by the Central Bank of the Russian Federation.

In accordance with clauses 1, 2 of part 2 of article 24 of Law No. 173-FZ, residents and non-residents carrying out foreign exchange transactions in the Russian Federation are obliged to submit documents and information to the bodies and agents of foreign exchange control in the cases provided for by this Federal Law, as well as keep the procedure for accounting and drawing up reports on foreign exchange transactions carried out by them.

The procedure for the submission by residents and non-residents to authorized banks of documents and information related to currency transactions is established by Bank of Russia Instruction No. 138-I dated 04.06.2012 "On the procedure for submission by residents and non-residents to authorized banks of documents and information related to currency transactions, the procedure registration of passports of transactions, as well as the procedure for accounting by authorized banks of foreign exchange transactions and control over their performance "(hereinafter - Instruction No. 138-I).

According to clause 1.5 of Instruction No. 138-I, a certificate of currency transactions and a certificate of supporting documents, the procedure, cases and terms of submission of which are established by this Instruction, are the forms of accounting for currency transactions of residents.

A resident, when carrying out operations related to crediting foreign currency to a transit foreign currency account or debiting foreign currency from a current account in foreign currency, shall submit to an authorized bank (branch of an authorized bank) (hereinafter referred to as an authorized bank, except for a direct reference to a branch of an authorized bank) at the same time the following documents: certificate of currency transactions; documents related to the conduct of currency transactions specified in the certificate of currency transactions (clause 2.1 of Instruction No. 138-I).

In accordance with clause 2.2 of Instruction No. 138-I, the certificate of currency transactions is filled in by the resident in one copy in accordance with the appendix

No. 1 to this Instruction.

The procedure for submitting by residents to authorized banks supporting documents

related to the implementation of foreign exchange transactions under agreements (contracts), for which there is a requirement to issue a transaction passport, is regulated by Chapter 9 of Instruction No. 138-I.

In accordance with clause 9.1, 9.1.3 of Instruction No. 138-I, which was in force at the time the imputed offense was committed, when fulfilling (changing, terminating) obligations under the contract (loan agreement), under which the transaction passport (hereinafter referred to as the PS) was issued, the resident submits to the PS bank simultaneously with one copy of the certificate of supporting documents filled out in accordance with Appendix 5 to this Instruction, documents confirming the fulfillment of obligations under the contract in a way other than the fulfillment of obligations under the contract in the form of settlements or documents confirming changes in obligations under the contract:

- in the case of performance of work, provision of services, transfer of information and results of intellectual activity, including exclusive rights to them,

- acceptance certificates, invoices, invoices and (or) other commercial documents drawn up under a contract and (or) in accordance with the customs of business turnover, including documents used by a resident to record his business transactions in accordance with the rules accounting and business customs.

Based on clauses 9.2, 9.2.1 of Instruction No. 138-I, the certificate of supporting documents and supporting documents specified in clause 9.1 of this Instruction shall be submitted by the resident to the PS bank no later than 15 working days after the end of the month in which the supporting documents were issued specified in subparagraphs 9.1.2 - 9.1.4 of paragraph 9.1 of this Instruction.

The date of registration of the supporting documents specified in cl. 9.1.2-9.1.4 p.

9.1 of the Instructions is the latest date of its compilation (clause 9.3 of the Instructions).

From the materials of the case it follows that the document confirming the fulfillment of obligations under contract No. 13-P4732 / 12 of 08.16.2012 is an act

No. KM00000037 dated January 31, 2013. According to clause 9.2.2. Instruction No. 138-I the deadline for submitting acts and certificates of supporting documents to the authorized bank is 02/21/2013.

However, in fact, a certificate of supporting documents and acts of work / services performed were submitted by KVANT-TELECOM CJSC to the authorized bank on 03/21/2013, that is, in violation of the time period established by the Instruction

No. 138-I, for 28 days.

Part 6.2 of Article 15.25 of the Code of Administrative Offenses of the Russian

Federation provides for administrative liability for violation of the established deadlines for the submission of accounting and reporting forms for foreign exchange transactions, supporting documents and information when carrying out foreign exchange transactions or the deadlines for submitting reports on the movement of funds on accounts (deposits) in banks outside the territory of the Russian Federation with confirming bank documents for more than ten, but no more than thirty days, which entails the imposition of an administrative fine on legal entities - from twenty thousand to thirty thousand rubles.

In accordance with Part 1 of Art. 30.1 of the Code of Administrative Offenses of the Russian Federation, a decision in a case of an administrative offense may be appealed by a person in respect of whom proceedings are underway in a case of an administrative offense.

Cases on challenging decisions of state bodies, other bodies, officials authorized in accordance with the Federal Law to consider cases on administrative offenses, on bringing to administrative responsibility persons engaged in entrepreneurial and other economic activities, are considered by the arbitration court in accordance with the general rules of claim proceedings provided for by the APC RF, with the features established in Chapter 25 of the APC RF and the federal law on administrative offenses (Part 1 of Art. 207 APC RF).

According to Part 6 of Art. 210 of the Arbitration Procedure Code of the Russian Federation, when considering a case on challenging a decision of an administrative body on bringing to administrative responsibility, an arbitration court in a court session verifies the legality and validity of the contested decision, establishes the presence of the appropriate powers of the administrative body that made the contested decision, establishes whether there were legal grounds for bringing to administrative responsibility whether the established procedure for bringing to responsibility has been observed, whether the statute of limitations for bringing to administrative responsibility has expired, as well as other circumstances that are important for the case.

By virtue of part 1 of article 1.5 of the Code of Administrative Offenses of the Russian Federation, a person is subject to administrative responsibility only for those administrative offenses in respect of which his guilt has been established.

A legal entity is found guilty of committing an administrative offense by virtue of Part 2 of Art. 2.1 of the Code of Administrative Offenses of the Russian Federation, if it is established that he had the opportunity to comply with the rules and norms, for violation of which the Code of the Russian Federation on Administrative Offenses or the laws of a constituent entity of the Russian Federation provides for administrative responsibility, but this person did not take all the measures in his control compliance.

Clause 16 of the Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation dated 02.06.2004 No. 10 provides that the determination of the guilt of a person for committing an administrative offense is carried out on the basis of the data recorded in the protocol on an administrative offense, the explanations of the person in respect of whom the proceedings on an offense, including the inability to comply with the relevant rules and regulations, to take all

measures depending on him to comply with them, as well as on the basis of other evidence.

Evidence of the existence of objective reasons that prevent the submission of certificates of supporting documents and supporting documents within the prescribed period, as well as evidence of the applicant's taking all measures in his control to comply with the requirements of the Bank of Russia Instruction No. 138-I dated 04.06.2012, was not presented in the case file ...

During the consideration of the administrative case of ZAO QUANT-TELECOM, an act of work / services performed No. KM000000037 dated January 31, 2013 was submitted under contract No. 13-P4732 / 12 dated August 16, 2012 with signatures and stamps of both parties to the contract.

Any documents confirming the receipt by KVANT-TELECOM CJSC of supporting documents by a later date (notifications of receipt of postal correspondence, documents with a mark on incoming / outgoing correspondence, etc.) were also not submitted.

Thus, the impossibility of submitting supporting documents and a certificate of supporting documents within the period established by law for objective reasons beyond the control of society, when the latter takes all necessary measures to prevent an administrative offense, the case materials have not been confirmed.

Consequently, in the actions of the applicant there are all signs of an administrative offense provided for in part 6.2 of Article 15.25 of the Administrative Offenses Code of the Russian Federation, expressed in the failure to submit acts and certificates of supporting documents to the authorized bank within the prescribed period.

The administrative body did not admit procedural violations during the inspection and prosecution, entailing the recognition as illegal and cancellation of the decision in the case of an administrative offense.

When bringing ZAO QUANT-TELECOM to administrative responsibility, the administrative body took into account mitigating circumstances. No aggravating circumstances were established in the course of the administrative proceedings.

The fact that the applicant committed an offense is not in dispute.

At the same time, KVANT-TELECOM CJSC considers it possible to apply the norms of Article 2.9 of the Code of Administrative Offenses of the Russian Federation to this offense and release him from administrative responsibility, limiting himself to an oral remark.

The court cannot agree with the applicant's arguments on the following grounds. Clause 18 of the Resolution of the Plenum of the Supreme Arbitration Court of the Russian

Federation of 02.06.2004, No. 10 "On some issues that have arisen in judicial practice when considering cases of administrative offenses" established that when qualifying an offense as insignificant, the courts must proceed from an assessment of the specific circumstances of its commission.

The insignificance of the offense takes place in the absence of a significant threat to the protected public relations. Circumstances such as, for example, the personality and property status of the person brought to justice, voluntary elimination of the consequences of the offense, compensation for the damage caused, are not circumstances indicating the insignificance of the offense. These circumstances, by virtue of parts 2 and 3 of Article 4.1 of the Code of Administrative Offenses of the Russian Federation, are taken into account when imposing an administrative penalty.

Clause 18.1 of the said resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation stipulates that the qualification of an offense as insignificant can take place only in exceptional cases, and is carried out taking into account the provisions of clause 18 of

this resolution in relation to the circumstances of a specific act committed by a person. In this case, the application by the court of provisions on insignificance must be motivated.

It is a right and not an obligation of the court to assess the offense as being of little significance.

The arguments of the applicant about the absence of harm to public relations and interests protected by law are rejected by the court on the basis of the following.

The offenses provided for by Article 15.25 of the Code of Administrative Offenses of the Russian Federation infringe on the established procedure for currency regulation and currency control, which must be sustainable and ensure the stability of the domestic foreign exchange market. A feature of the objective side of the offense imputed to the applicant is the failure to comply with the established deadlines for fulfilling certain obligations.

In accordance with Part 1 of Article 22 of Federal Law No. 173-FZ, currency control in the Russian Federation is carried out by the Government of the Russian Federation, currency control authorities and agents in accordance with this Federal Law and other federal laws. By virtue of part 3 of this article, the agents of currency control are authorized banks accountable to the Central Bank of the Russian Federation.

Compliance by a legal entity with the requirements established by currency legislation and acts of currency control bodies follows, first of all, from the general legal principle enshrined in Article 15 of the Constitution of the Russian Federation, according to which any person must comply with the obligations established by law. The applicant, as a resident, must not only know about the existence of the established procedure for submitting documents and information to authorized banks when carrying out foreign exchange transactions, the procedure for issuing by residents in authorized banks a transaction passport when carrying out foreign exchange transactions, the procedure and terms for submitting accounting and reporting forms and other mandatory for residents requirements, but also to ensure its implementation - to observe the degree of care and discretion that is necessary for strict compliance with the requirements of the law.

In this case, the applicant did not cite and the court did not establish any circumstances indicating the exclusivity of the case in question, which could be characterized as differing in its circumstances from the general rule provided for by the disposition of part 6.2 of Article

15.25 Administrative Code of the Russian Federation.

An objective reflection of the degree of public danger of a wrongful act and, as a consequence, a potential threat to public relations protected by law is the sanction of Art. 15.25 of the Code of Administrative Offenses of the Russian Federation, providing for the application to legal entities of an administrative fine in the range from 20,000 to 30,000 rubles.

The applicant has not taken sufficient measures to timely fulfill his public duty, which indicates the resident's disdainful attitude towards the requirements of the acts of the currency legislation of the Russian Federation and the acts of the currency regulation bodies.

The applicant's argument about the absence of signs of disdain for the performance of the duties assigned to him by the current legislation contradicts the case materials.

In addition, the court takes into account that in relation to ZAO KVANT-TELECOM, 7 decisions were issued on the appointment of administrative penalties for committing offenses under Part 6.1, 6.2 and 6.3 of Art. 15.25 Administrative Code of the Russian Federation.

These circumstances are circumstances aggravating administrative responsibility, and also testify to the Company's dismissive attitude towards the performance of the duties assigned to it by the current legislation, and, consequently, the absence of the exclusivity of the offense committed.

Thus, the commission of several similar offenses by KVANT-TELECOM CJSC indicates that its behavior is associated with a systematic disregard for public requirements in the field of currency legislation.

By virtue of the foregoing, the court concludes that it is not possible to recognize the offense committed by the applicant insignificant, since in this particular case the release of a person from liability would contradict the requirements of Articles 1.2 and 24.1 of the Administrative Code of the Russian Federation.

In accordance with part 3 of Article 211 of the Arbitration Procedure Code of the Russian Federation, if, when considering an application for challenging a decision of an administrative body on bringing to administrative responsibility, an arbitration court finds that the decision of an administrative body on bringing to administrative responsibility is legal and reasonable, the court decides to refuse satisfying the applicant's claim.

In such circumstances, the requirement of CJSC "QUANT-TELECOM" to declare illegal and cancel the decision of the Territorial Administration of the Federal Service for Financial and Budgetary Supervision in the Voronezh Region on the appointment of an administrative penalty in case No. 20-14 / 37 dated 20.02.2014 is not subject to satisfaction.

According to paragraph 4 of Art. 208 of the APC RF, an application for challenging the decision of an administrative body on bringing to administrative responsibility is not subject to a state fee.

Based on the foregoing and guided by Part 6.2 of Art. 15.25 of the Code of Administrative Offenses of the Russian Federation, Art. Art. 167 - 170, 211 of the Arbitration Procedure Code of the Russian Federation, court

DECIDED:

Refuse to satisfy the application of the Closed Joint Stock Company

"QUANT-TELECOM" on the recognition of illegal and cancellation of the resolution of the Territorial Administration of the Federal Service for Financial and Budgetary Supervision in the Voronezh Region No. 20-14 / 37 of 20.02.2014 on attracting

administrative liability on the grounds of Part 6.2 of Article 15.25 of the Administrative Offenses Code of the Russian Federation in the form of an administrative fine in the amount of 20,000 rubles.

The decision can be appealed within 10 days in the 19th Arbitration Court of Appeal through the Arbitration Court of the Voronezh Region.

Judge T.V. Pimenova