

CONSTITUTIONAL COURT OF THE RUSSIAN FEDERATION

**THE RULE OF LAW  
AND CONSTITUTIONAL JUSTICE  
IN THE MODERN WORLD**

**RESPONSE TO THE QUESTIONNAIRE**

**to the IV Congress  
of the World Conference on Constitutional Justice**

11–14 September 2017, Vilnius, Lithuania

## **THE RULE OF LAW AND CONSTITUTIONAL JUSTICE IN THE MODERN WORLD**

### **A. The rule of law and constitutional justice in the modern world**

#### **I. The different concepts of the rule of law**

*1. What are the relevant sources of law (e.g. the Constitution, case-law, etc.) which establish the principle of the rule of law in the legal system of your country?*

The rule of law, being one of the fundamental principles of the constitutional order of the Russian Federation that characterise Russia as a law-governed state, acquired its direct enshrinement in the provisions of the Russian Constitution, in particular, as interpreted by the Constitutional Court of the Russian Federation, provisions of the national legislation; moreover, the rule of law as a principle of the national legal system derives from international treaties of the Russian Federation and universally recognised principles and norms of international law, which constitute a part of Russian legal system.

However, by reference to the principle of supremacy of the Constitution of the Russian Federation, the substance of the principle of the rule of law, first and foremost, is based on the Constitution, in particular, as interpreted by the Constitutional Court of the Russian Federation.

During the 1995–2016 period the Constitutional Court of the Russian Federation adopted a total of 466 judgments, in 54 of which the “the rule of law” construct is explicitly referred to; the named construct is also encountered in 63 Court’s rulings, containing extensive interpretation of branch legislation, on refusal to admit the lodged petitions for consideration (the first judgment containing a reference to the given principle is *the Judgment of 22 March 2005 No. 4-P*).

**2. *How is the principle of the rule of law interpreted in your country? Are there different concepts of the rule of law: formal, substantive or other?***

The practice of the Constitutional Court of the Russian Federation demonstrates a broad and comprehensive understanding of the principle of the rule of law. The reason therefor is comprehension of the latter not as a detached, narrow legal principle (for instance, like the supremacy of the Constitution or the supremacy of laws), but as a comprehensive legal category, various aspects of which are enshrined in multiple provisions of the effective Constitution of the Russian Federation. Furthermore, the practice of the Constitutional Court of the Russian Federation reflects an organic interrelation of constituent elements of the principle of the rule of law – as a general rule, in situations where the Court reveals an incompatibility of a provision of branch legislation with any single element, it detects violations of other elements further on as well.

In contrast to a number of constitutions of foreign states, the Constitution of the Russian Federation does not explicitly enshrine the principle of the rule. The given principle in Russian constitutional justice exists as a result of interpretation of the text of the Constitution itself and a number of international legal acts, which constitute a part of the legal system and a landmark in recognition and guaranteeing human and citizen rights and freedoms. The Constitutional Court of the Russian Federation observes that the principle of the rule of law, which the legal system in the Russian Federation is based upon, by implication of articles 1 (part 1), 2, 4 (part 2), 15, 17, 18, 19 and 118 (part 1) of the Constitution is an inherent element of a law-governed state (*Judgment of 21 January 2010 No. 1-P*).

Meaning and substance of the principle of the rule of law in its Russian interpretation cannot be revealed without examination of peculiarities of realisation thereof within Russian legal system; in particular, through the spectacle of

substantive diversities in approaches to ensuring of this principle in Russian and West-European understanding. First and foremost, this refers to heightened attention, within West-European concept of the rule of law, on processual (procedural) issues of its practical implementation, whereas Russian legal science focuses on legal substance and eidetic meaning of the principle as such.

Certainty, it is undeniable that precise adherence to the adjusted, unified procedure in concrete situations of law enforcement is able to ensure observance of formal legality<sup>1</sup>. This is what, for instance, the European Court on Human Rights, which in many of decisions virtually presumed facts of violation of applicants' rights by Russia just due to the lack of adduction of proper documental formalisation of all the procedures occurred, proceeds from.

In the meantime, it is as well hard to deny the fact that formal adherence to a procedure without its real essential substance occasionally leads to devaluation of the very idea of ensuring exercise and/or protection of human rights.

With due regard to this circumstance the Constitutional Court of the Russian Federation has repeatedly stated that when resolving a respective dispute a court shall not limit itself to formal determining of facts, which would otherwise diminish the right to judicial protection enshrined in Article 46 (parts 1 and 2) of the Constitution of the Russian Federation and would contradict the requirement of real ensuring of rights and freedoms of citizens with justice (*judgments of 6 June 1995 No. 7-P and of 3 November 1998 No. 25-P; rulings of 8 February 2011 No. 130-O-O, of 7 June 2011 No. 767-O-O, of 2 July 2015 No. 1544-O, etc.*);

---

<sup>1</sup> In the *Judgment of 24 February 2004 No. 3-P* the Constitutional Court of the Russian Federation emphasised that, in particular, by virtue of the constitutional principles of *law-governed state and inviolability of private property* (Article 1, part 1; Article 35, part 3; Article 55, parts 2 and 3 of the Constitution of the Russian Federation) decisions on consolidation of stocks shall be adopted under a *proper legal procedure*, which implies a gradual activity performed in reasonable terms in order to protect rights of minor stakeholders being a weaker party in corporate relationships, under effective judicial review.

concurrently, a court shall assess evidences in accordance with its internal conviction being based on comprehensive, thorough, objective and unmediated examination of evidences available in the case, whereas no evidence shall have predetermined effect therefor (parts one and two of Article 67 of the GPK [Civil Procedural Code] of the Russian Federation).

For instance, in relation to the rights of a person who suffered physical or pecuniary damage as a consequence of an act prohibited by criminal legislation, but who lacks a formal criminal-procedure status of an aggrieved person, the Constitutional Court of the Russian Federation in *the Judgment of 25 June 2013 No. 14-P*, drawing on the previously expressed legal positions (in *the Judgment of 27 June 200 No. 11-P*, *rulings of 22 January 2004 No. 119-O*, *of 17 November 2011 No. 1555-O*, etc.), stated, in particular, that such a person shall not as well be deprived of a right to judicial protection and to access to justice without an unjustified delay, inasmuch as ensuring of guaranteed by the Constitution of the Russian Federation human and citizen rights within criminal judicial proceedings is determined *not by formal recognition of a person* as one or another participant of criminal case proceedings, in particular, as an aggrieved person, but by *the existence of certain essential attributes characterising factual position of that person* as the one requiring ensuring of respective rights.

For its part the Constitutional Court of the Russian Federation appears to be to a greater extent giving priority to the essential aspect of ensuring of the rule of law through the constitutionality of concrete legal constructs formalising these or that legal relationships – and thereby to ensuring of constructive perfection of various branches of law for achieving a balance both in private-law and public-law relationships in the context of exercise of constitutional rights and freedoms of citizens<sup>2</sup>.

---

<sup>2</sup> Thus in *the Judgment of 02 December 2010 No. 22-P* the Constitutional Court of the Russian Federation proceeded from that the regulation guaranteeing economic independence to a wide

**3. Are there specific fields of law in which your Court ensures respect for the rule of law (e.g. criminal law, electoral law, etc.)?**

The Constitutional Court of the Russian Federation by means of administration of constitutional justice ensures the observance (implementation) of the principle of the rule of law, which appears to be one of the fundamental principles of Russian constitutional order, in all without distinction branches (spheres) of law as a principle of a general legal character.

However, it should be pointed out that the sphere of criminal justice (criminal law and criminal procedure) appears for Russian constitutional judicial proceedings to be traditionally a sphere that the effect of the principle of the rule of law applies to primarily and unconditionally, inasmuch as it is that particular branch of law where any violation of human rights, in particular, through deviation from the named principle, might have consequences adverse to the maximum extent, whereas the direct harm of that violation to an individual, the rights and freedoms thereof, which are recognised to be the supreme value, appears to be the most grievous.

---

range of persons facilitates successful implementation of the principles of a social state and socially oriented market economy, which is based on the balance between rights and legitimate interests of local self-government and persons occupied in the sphere of small and medium entrepreneurship, and, eventually, contributes to the enhancement of civil society, *rule of law* and democracy.

In *the Judgment of 27 June 2012 No. 15-P* the Constitutional Court of the Russian Federation, having observed that adjudgment of a citizen legally incapacitated – proceeding from the supremacy and direct effect of the Constitution of the Russian Federation, priority of universally recognised principles and norms of international law and international treaties of the Russian Federation (Article 15, parts 1 and 4, of the Constitution of the Russian Federation) – shall take place only in cases where other measures of protection of rights and legitimate interests thereof appear to be inadequate, designated the necessity for the federal legislature to introduce amendments into the operative mechanism of protection of rights of citizens of unsound mind, in particular, in terms of providing them with necessary support in exercise of citizen rights and duties, which would allow a court to consider the degree of impairment in ability of such citizens to realise the meaning of their actions or to control thereof within certain spheres of life activities, and which would guarantee the protection of their rights and legitimate interests to the maximum extent.

Thus the principle of the rule of law is directly referred to in 3 judgments of the Constitutional Court of the Russian Federation related to criminal law issues (*of 27 May 2008 No. 8-P, of 13 July 2010 No. 15-P, of 17 June 2014 No. 18-P*) and 10 judgments related to criminal proceedings issues (*of 16 July 2008 No. 9-P, of 29 November 2010 No. 20-P, of 31 January 2011 No. 1-P, of 19 July 2011 No. 18-P, of 17 October 2011 No. 22-P, of 18 October 2011 No. 23-P, of 2 July 2013 No. 16-P, of 19 November 2013 No. 24-P, of 10 December 2014 No. 31-P, of 17 December 2015 No. 33-P*).

In the meantime, there is a large bunch of decisions of the Constitutional Court of the Russian Federation (most of which relate to criminal justice issues) that do not directly contain references to the principle of the rule of law but, nevertheless, rely upon the elements constituting the concept thereof, namely:

- 1) the principle of legal certainty (*judgments of 6 December 2011 No. 27-P, of 21 December 2011 No. 30-P, of 25 March 2014 No. 8-P, of 16 July 2015 No. 22-P*);
- 2) the principle of prohibition of arbitral actions of public authorities (*Judgment of 20 July 2012 No. 20-P*);
- 3) the right of access to justice (*judgments of 16 October 2012 No. 22-P, of 20 July 2012 No. 20-P, of 25 March 2014 No. 8-P*);
- 4) the principle of equality of everyone before the law and courts and prohibition of discrimination (*judgments of 11 December 2014 No. 32-P and 25 February 2016 No. 6-P*).

In general, it should be emphasised that implicitly the principle of the rule of law forms the basis of all without distinction decisions of the Constitutional Court of

the Russian Federation despite of branch-of-law appurtenance of the issues considered therein.

***4. Is there case-law on the content of the principle of the rule of law? What are the core elements of this principle according to the case-law? Please provide relevant examples from case-law.***

The substance of the principle of the rule of law – by virtue of incidental character of normative review exercised by the Court – reveals itself both in general form and in relation to particular legal institutions being diverse in their substance and branch-of-law appurtenance. In its *Judgment of 31 July 1995 No. 10-P* the Constitutional Court observed that in accordance with the principle of the rule of law public authorities in their activity are bound by both domestic and international law.

In the opinion of the Constitutional Court of the Russian Federation, the most important constitutional elements of the principles of the rule of law and of a law-governed state are equality and justice, requirements of certainty, clarity and unambiguousness of legal norms and their consistency with the system of operative legal regulation (*judgments of 6 April 2004 No. 7-P, of 31 May 2005 No. 6-P, of 18 July 2008 No. 10-P*), priority and direct effect of the Russian Constitution, separation of powers, prohibition of arbitrariness, requirements of justice and proportionality, as well as boundness of bodies of State authority by the Constitution and law, including courts, responsibility of the State for actions of its bodies and officials.

The principle of the rule of law implies responsibility of the State before citizens, in particular, a right to compensation for harm inflicted by unlawful actions (omissions) of a body of State authority or an official, and a corresponding to it public-law obligation of the Russian Federation being a law-governed state before



those inflicted by actions of bodies and officials authorised thereby (*judgments of 2 March 2010 No. 5-P, of 19 July 2011 No. 18-P*). As a special constitutional obligation of the Russian Federation, being a law-governed state, serves the recognition and ensuring of a right to compensation for harm to health (*Judgment of 19 June 2002 No. 11-P*).

Analysis of the practice of the Constitutional Court of the Russian Federation in the sphere of criminal justice demonstrates that in this sphere the Court most frequently adverts to such aspects of the principle of the rule of law as formal certainty of criminal laws, legal certainty, legality, inadmissibility of arbitral application of criminal laws, legal certainty, judicial protection, access to justice, independence and impartiality of justice, as well as responsibility of the State for actions of bodies and officials thereof.

The Constitutional Court of the Russian Federation has consequently stressed the importance of formal certainty of criminal laws and of legal certainty being constituent parts of the principle of the rule of law. Thus the Constitutional Court observes that the principle of formal certainty of laws implies accuracy and clarity of legislative precepts, and being an indispensable element of the rule of law serves both in legislative activity and in law enforcement practice as an essential guarantee of ensuring of effective protection against arbitral prosecution, conviction and punishment (*judgments of 27 May 2008 No. 8-P and of 13 July 2010 No. 15-P*), against disproportional, excessive restriction of rights and freedoms in the course of application of criminal liability measures to someone who has infringed some sort of rules (*Judgment of 17 June 2014 No. 18-P*).

The principle of formal certainty of criminal laws in the practice of Russian constitutional justice has repeatedly served as a methodological foundation for deciding a number of cases and, eventually, – for restoration of constitutional rights and freedoms of citizens in the sphere of criminal justice, violation of which

stemmed from ambiguity of substance of a criminal law and inconsistency of regulatory and protective norms. Thus by *the Judgment of 27 May 2008 No. 8-P* the Constitutional Court held as nonconforming with the Russian Constitution the then effective<sup>3</sup> provision of part one of Article 188 of the Criminal Code of the Russian Federation, to the extent that it enabled to adjudge as a contraband in large amount (*i.e.* exceeding the equivalent of 250 000 Roubles) all the sum moved by a person, including the part thereof which the law permits to import into the Russian Federation without written declaring. Russian currency regulation makes distinction between the sums being moved across the State border and concurrently being subject to carrying inwards without declaring, and the sums being carried inwards in violation of the established norms, which entails administrative and criminal liability. The established court practice followed the path of including of the whole amount of an illegally carried sum into the amount of a contraband, *i.e.* without due regard to the sums permitted for carrying inwards and the sums, for illegal moving of which there is administrative liability established. The given Judgment introduced certainty into this issue, and the sums permitted for carrying inwards, as well as the sums, illegal moving of which entailed only administrative liability, henceforth began to be deducted from the amount of criminally punishable contraband.

Another aspect of the substance of the principle of the rule of law reflecting in the practice of the Constitutional Court of the Russian Federation is the requirement of legality as a regime of observance of provisions of legislative acts and the stemming from the given requirement prohibition of arbitral application of laws. The Constitutional Court of the Russian Federation has taken a lot of efforts for the enhancement of legality principle within the conduct of criminal judicial proceedings, by having stressed the importance of observance of legal norms as a guarantee of stability of the legal order in the Russian Federation.

---

<sup>3</sup> Subsequently, Article 188 of the Criminal Code of the Russian Federation was repealed by the Federal Law of 7 December 2011 No. 420-FZ.

The Constitutional Court turned attention to the importance of observance of the legality regime in the course of conduct of criminal judicial proceedings in *the Judgment of 2 July 2013 No 16-P* concerning the grounds for returning of a criminal case to the prosecutor. Russian criminal judicial proceedings combine investigative (inquisitorial) principles on the pre-trial stage and adversarial ones – within the trial in the courts of first and higher level instances. Due to such construct of the process, the subject thereof – accusation in its factual and legal characteristics – is being formed on the stage of pre-trial procedure by the officials authorised thereto – the investigator who brings a charge and the prosecutor who approves the statement of charge. One of the institutions that caused major problems in the course of transition of criminal procedure from inquisitorial type to the adversarial one is returning of a criminal case to the prosecutor for removing of obstacles for the consideration of the case by a court. In the former legislation such returning was called a returning for a supplementary investigation and represented a granted to the party of prosecution additional opportunity for proving the guilt of the accused when it was failed to do at the initial consideration of the case. The new UPK [Criminal Procedure Code] of the Russian Federation abolished the given institution, however it implied returning of a criminal case to the prosecutor on formal grounds (for instance, settling of the statement of charge with major formal mistakes), which allowed a number of scientists and politicians to claim a return of the institution of supplementary investigation into the criminal procedure.

The Constitutional Court held that in case where in the course of court proceedings there will be discovered evidences of commitment of a more grave crime by the accused than those incriminated to him by criminal prosecution bodies, the court must return the criminal case to the prosecutor for clarification of factual circumstances of the case and settlement of a new statement of charge, inasmuch as incorrect application of provisions of the Criminal Code of the Russian Federation, incorrect qualification by a court of the deed virtually committed by an

accused, and, therefore, invalid establishment of grounds for criminal liability and for imposition of punishment (even though the latter being within the limits of a sanction of the applied article) entail delivering of an unjust sentence, which shall be inadmissible in a law-governed state where the rule of law is an imperative.

The constitutional principle of equality being an element of the principle of the rule of law is considered by the Constitutional Court of the Russian Federation as a constitutional criterion for evaluation of legislative regulation of any rights and freedoms, concurrently, the applicability of the given principle to all fundamental rights and freedoms does not eliminate the possibility of diverse demonstrations thereof: with regard to personal rights it implies mostly the formal equality, whereas with regard to economic and social rights formal equality might turn into material inequality.

Inasmuch as the constitutional principle of equality, which implies equal treatment of formally equal subjects, does not stipulate the necessity of providing of identical guarantees to persons belonging to different categories, the equality before the law does not eliminate factual diversities and the necessity for the legislature to pay due regard thereto (*rulings of 15 April 2008 No. 263-O-O, of 24 September 2012 No. 1549-O, etc.*).

The Constitutional Court of the Russian Federation has repeatedly stated that in the exercise of legal regulation of the right of ownership and relationships of possession, usage and disposal of property associated therewith, the federal legislature shall be governed by the fundamental principles of the rule of law and legal equality, in accordance with which interference of the State with these relationships shall not be arbitral and shall not disturb the balance between the public interests requirements and the necessary conditions of protection of individuals' fundamental rights, which implies a reasonable proportionality between the applied instruments and the pursued objective, so that the balance of

constitutionally protected values would be ensured and the person would not be excessively burdened (*judgments of 16 July 2008 No. 9-P, of 31 January 2011 No. 1-P, of 14 May 2012 No. 11-P, of 4 July 2015 No. 13-P, of 12 April 2016 No. 10-P, etc.*).

The Constitutional Court of the Russian Federation in its practice analyses another side of the principle of the rule of law, related to the legality, as well – the prohibition of arbitral actions of public authority, including arbitral interference with the concrete public relationships, within which constitutional rights and freedoms of citizens are being exercised, upon which the balance of private and public interests of the participants of the given relationships is being ensured. Thus in *the Judgment of 16 July 2008 No. 9-P* the Constitutional Court observes that by virtue of such fundamental principles as the rule of law and legal equality, interference of the State with the property relationships shall not be arbitral and shall not disturb the balance between the public interests requirements and the necessary conditions of protection of individuals' fundamental rights, which implies a reasonable proportionality between the applied instruments and the pursued objective, so that the balance of constitutionally protected values would be ensured and the person would not be excessively burdened.

In the perception of the Russian Constitutional Court, the substance of the principle of the rule of law includes inviolability of property as well. Thus the Constitutional Court, when appealing to constitutional provisions on the right of ownership and on the freedom of entrepreneurial and other not prohibited by law activity (articles 34, part 1, and 35), observes that one of the fundamental aspects of the rule of law virtually manifests itself in them – the universally recognised in civilised states principle of inviolability of property which serves as a guarantee of the right of ownership in all of its components, such as possession, usage and disposal of one's property (*judgments of 16 July 2008 No. 9-P and of 31 January 2011 No. 1-P*).

Furthermore, in *the Judgment of 27 June 2013 No. 15-P* the Constitutional Court stated that “the federal legislature, in its law-making activity being bound by the requirements of the rule of law, legal certainty and maintenance of mutual trust in relationships between individuals and the public authority which derive from the principle of the law-governed statehood, bears an obligation to preclude occurrence of a situation where the results of conducted elections to a position of the head of a municipal formation would be called into question and might be reconsidered by virtue of adjudging the elections invalid for the sole formal ground – adoption by a court of a decision on illegality of forcing the previously elected head of the municipal formation to resign”.

**5. *Has the concept of the rule of law changed over time in case-law in your country? If so, please describe these changes referring to examples.*** [SEP]

Understanding of the substance of the principle of the rule of law in the practice of the Constitutional Court has evaluated and increased in line with the general tendencies of understanding of the given principle by other European constitutional jurisdictions and international organisations. During 2005–2010, the Constitutional Court of the Russian Federation demonstrated the relations between the elements of the rule of law and the provisions of the Russian Constitution, the substance of the given elements was increased within reviewing of norms of branch legislation which became a subject for consideration of the Constitutional Court of the Russian Federation. As a result of such interpretational process, the provisions on the rule of law being worded in international legal acts rather laconically, acquired a more extensive interpretation containing concrete landmarks both for the legislature and law enforcement practice.

**6. *Does international law have an impact on the interpretation of the principle of the rule of law in your country?***

The Constitutional Court of the Russian Federation always emphasises the relation between the norms enshrined in the Russian Constitution and international legal acts, stressing that both of them enshrine different aspects of the rule of law. For the Russian Constitutional Court due consideration of international legal norms is not a good tradition of synchronising watches or just a rule of good manners, it represents an entrenched in practice approach and methodological technique which are directed towards the performance by the Russian Federation of its international obligations.

Such due consideration by the Constitutional Court is performed by virtue of comparing of Russian constitutional regulation and the regulation contained in the acts of the UN, the Council of Europe and other organisations, which the Russian Federation is a member of, such as various international treaties, international standards, resolutions, recommendations of permanent international bodies, decisions of judicial and quasi-judicial bodies. The Constitutional Court of the Russian Federation most frequently appeals to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and practice of the UN Committee on Human Rights based thereupon, the Convention for the Protection of Human Rights and Fundamental Freedoms and the case-law of the European Court of Human Rights; less frequently – to recommendations of the Committee of Ministers of the Council of Europe; sporadically – to thematic international standards (for instance, the Tokyo, the Beijing rules or the Riyadh Guidelines).

In particular, the Constitutional Court, in relation to different issues addressed in the cases considered thereby, turns attention not only to global (conceptual) provisions of the practice of the European Court of Human Rights, but to special provisions as well. Thus in *the Ruling of 19 July 2016 No. 1616-O* the Constitutional Court demonstrated particular issues of the doctrine of subjective and objective impartiality of a court, which had been elaborated by the European

Court of Human Rights. The Constitutional Court of the Russian Federation observed that the European Court of Human Rights, having made a distinction between subjective and objective aspects of impartiality of a court, and proceeding from a necessity of a differentiated approach to the evaluation of admissibility of the repetitive participation of a judge in consideration of a case, attributes consideration by a judge of the issues, in relation to which he has previously adopted respective decisions, to a number of circumstances sufficient for an objectively reasonable doubt in the judge's impartiality.

In the meantime, in the practice of the Constitutional Court of the Russian Federation there can be found not only the cases of concurrence of general and special approaches to regulation of some sort of relationships, but also the cases where Russian constitutional justice moves ahead of international legal regulation by providing Russian citizens with more rights in comparison with international acts.

Thus in *the Judgment of 25 June 2013 No. 14-P* the Constitutional Court stood up for the right of an aggrieved person in a criminal case to lodge an application for awarding a compensation for violation of the right to criminal judicial proceedings in a reasonable term in cases, where in the criminal case, which was terminated by a decision of an authorised body or official, no suspects or accused were established. When considering the given case the Constitutional Court established that, in relation to the right of a person aggrieved by a crime to access to justice in a reasonable term, the Constitution of the Russian Federation and the federal legislation based thereupon provide for a higher level of legal guarantees than the Convention for the Protection of Human Rights and Fundamental Freedoms as interpreted by the European Court of Human Rights. The Federal Law "On compensation for violation of the right to judicial proceedings in a reasonable term or the right to enforcement of a judicial act in a reasonable term" and the provisions of civil judicial legislation related thereto provide for a right to appeal to



a court with an application for awarding a compensation for violation of the right to criminal judicial proceedings in a reasonable term by others than stipulated in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms person who is brought a charge against (in the context of interpretation of the given article by the European Court of Human Rights – a person being brought to criminal liability), – subjects of criminal judicial proceedings including the aggrieved person, which expands for the Russian Federation the sphere of effect of Article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms in relation to the right to a fair trial in a reasonable time recognised by Article 6 thereof.

## **II. New challenges to the rule of law**

***7. Are there major threats to the rule of law at the national level or have there been such threats in your country (e.g. economic crises)?***

The Constitutional Court of the Russian Federation in *the Ruling of 17 July 2014 No. 1567-O* gave appraisal to the regulation in respect of creation in the Russian Federation of the Supreme Court of the Russian Federation accumulating functions of the previously functioning Supreme Court of the Russian Federation and the Supreme Commercial Court of the Russian Federation.

The Constitutional Court acknowledged that abolishment of the two highest courts within the course of a judicial reform and the creation of the new Supreme Court of the Russian Federation is a unique situation requiring special measures which have to be directed towards providing independence and tenure of judges who were occupying positions in the abolished highest courts by means of providing them with a possibility to continue their professional activities in the newly established judicial body or other courts within the judicial system of the Russian Federation, and in case of impossibility of such a transfer – by means of providing guarantees of material security resulting from the status of a retired judge.

Interpretation of the provisions of the Law of the Russian Federation “On the Status of Judges in the Russian Federation” in the named Ruling of the Constitutional Court of the Russian Federation provided for stable and peaceful realisation of tasks put by the legislature in the provisions of the considered law on amendments to the Constitution of the Russian Federation of a transitional character, which allowed to prevent a possible crisis related to that reform.

**8. *Have international events and developments had a repercussion on the interpretation of the rule of law in your country (e.g. migration, terrorism)?***

Interpretation of the principle of the rule of law in the practice of the Constitutional Court relies upon the methodology of constitutional interpretation with due consideration of practice of international and supranational jurisdictional bodies.

**9. *Has your Court dealt with the collisions between national and international legal norms? Have there been cases of different interpretation of a certain right or freedom by your Court compared to regional / international courts (e.g. the African, Inter-American or European Courts) or international bodies (notably, the UN Human Rights Committee)? Are there related difficulties in implementing decisions of such courts / bodies? What is the essence of these difficulties? Please provide examples.***

Since the date of adherence of the Russian Federation to the European conventional system and until adoption by the European Court of Human Rights of a judgment in the case of “*Markin v. Russia*” none of any significant problems related to the conflict of law-understanding between the Constitutional Court of the Russian Federation and the ECtHR have occurred. With the adoption of the named judgment the necessity of creation of a mechanism for the protection of Russian constitutional legal order providing for maintenance of Russian membership in the

conventional system, which assists national authorities in human rights protection, appeared.

The first significant step in this direction was made by the Constitutional Court of the Russian Federation in *the Judgment of 6 December 2013 No. 27-P*, where the Court addressed the issue of establishing competence borders of its activity within the context of interaction between Russian courts and the ECtHR. Concurrently, when considering this issue the Constitutional Court addressed constitutional and conventional obligations of the Russian Federation, and relied upon its previously elaborated legal positions on the supremacy of the Constitution of the Russian Federation and demarcation of competence between the Constitutional Court of the Russian Federation and other courts.

Thus the Constitutional Court of the Russian Federation stressed that a final judgment of the European Court of Human Rights is, unconditionally, subject to enforcement. At the same time one of the procedural guarantees of execution of a judgment of the European Court of Human Rights in the Russian Federation is item 4 of part 4 of Article 392 of the GPK [Civil Procedure Code] of the Russian Federation, according to which a final judgment of a court can be reconsidered upon an application of an interested party by virtue of the occurrence of a new circumstance, which a final judgment of the European Court of Human Rights shall be admitted to be in this particular case.

Earlier in *the Judgment of 26 February 2010 No. 4-P* the Constitutional Court of the Russian Federation stated that a person in whose respect the European Court of Human Rights found a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms shall have the right to apply to a competent court of the Russian Federation with an application for reconsideration of the decision of a court which became a ground for applying to the European Court of Human Rights, and shall be certain that his application will be considered. In its

turn a decision of the competent court regarding the possibility of reconsideration of the judgment in question – taking into account the necessity to adopt special individual measures for restoration of the violated rights – shall be founded on comprehensive and complete consideration of its reasons as well as the circumstances of a concrete case. This position of the Constitutional Court of the Russian Federation predetermined the changes introduced afterwards by the Federal Law of 9 December 2010 No. 353-FZ to the GPK [Civil Procedure Code] of the Russian Federation which provided for a new ground of reconsideration of judgments, which became effective, by virtue of recognition by the European Court of Human Rights of violations of the Convention for the Protection of Human Rights and Fundamental Freedoms in the course of consideration of a concrete case by a court, the adoption of a decision in which became the ground for the applicant to appeal to the European Court of Human Rights.

Further on, in *the Judgment of 14 July 2015 No.21-P* of the Constitutional Court of the Russian Federation it was stated that any decision of the ECtHR in respect of Russia shall be considered as an integral part of Russian legal system, however, participation of Russia in international treaties shall not, firstly, lead to violations of human rights and, secondly, shall nor create a threat to the foundations of the constitutional order. Rules of an international treaty, in case if they violate constitutional provisions which have a great importance for Russia, cannot and shall not be applicable in the legal system thereof. This means that neither the European Convention nor the ECtHR decisions evaluating national legislation or considering a necessity to change them – shall not abolish the priority of the Constitution of the Russian Federation and can be implemented only provided for the observance of this condition.

The Constitutional Court of the Russian Federation has foreseen in the mentioned judgment a number of measures allowing to provide a mechanism for realisation of the abovementioned conclusions some of which were stated and elaborated in the

Federal Constitutional Law of 14 December 2015 No. 7-FKZ “On amending the Federal Constitutional Law “On the Constitutional Court of the Russian Federation” regarding introduction of the legal institute of consideration of cases regarding the possibility to implement decisions of an international body for the protection of human rights and freedoms. Practical implementation of the said institute was reflected in *the Judgment of the Constitutional Court of the Russian Federation of 19 April 2016 No.12-P* in the case concerning resolution of the question of possibility of execution in accordance with the Constitution of the Russian Federation of the Judgment of the European Court of Human Rights of 4 July 2013 in the case of “*Anchugov and Gladkov v. Russia*” in connection with the request of the Ministry of Justice of the Russian Federation.

### **III. The law and the state**

#### ***10. What is the impact of the case-law of your Court on guaranteeing that state powers act within the constitutional limits of their authority?***

The Constitutional Court of the Russian Federation in majority of its decisions stresses that bodies of state authority in exercising their competence are bound by the legislative requirements regulating their activities.

For instance, there is a quite widespread practice of applications of citizens challenging constitutionality of article 281 of the Criminal Procedure Code of the Russian Federation which establishes three grounds for announcement of testimonies of aggrieved persons and witnesses who did not appear before the court. A large number of applications can be attributed to the fact that the practice of the general jurisdiction courts in respect of the applicants’ cases demonstrates that the first instance courts adopt decisions to announce testimonies of aggrieved persons and witnesses who did not appear before the court on the grounds which are not stipulated by the law (for instance, when respective law-enforcement bodies were not able to locate a certain witness), whereas the courts of higher

instances do not recognise it as a procedural violation. The Constitutional Court of the Russian Federation in its decisions (*rulings of 14 October 2004 No. 326-O, of 7 December 2006 No. 548-O, of 20 March 2008 No. 188 O-O, of 16 April 2009 No. 440-O-O, of 29 September 2016 No. 1792-O*) has repeatedly stressed that announcement of testimonies given while conducting preliminary investigation is regarded as an exception and is allowed only in cases provided by the law, which does not permit broad interpretation of the list of cases where announcement in the court of the previously taken testimonies of aggrieved persons or witnesses who did not appear before the court is allowed.

The importance of compliance with the regime of legality in the course of conducting of criminal proceedings was stressed by the Constitutional Court in *the Judgment of 2 July 2013 No. 16-P*.

In *the Judgment of 14 February 2013 No. 4-P* the Constitutional Court gave appraisal to the constitutionality of provisions regulating the way of realisation of freedom of association, which substantially softened the severity of the challenged provisions.

Within the last years a special significance was given to the decisions of the Constitutional Court of the Russian Federation where the Court evaluated constitutionality of the reform of interaction between the State and non-commercial organisations. Legal positions of the Court made it possible to clarify regulation affecting rights of non-commercial organisations.

For instance, in *the Judgment of 8 April 2014 No.10-P*, when considering the issue of the status of the so-called foreign agents, the Constitutional Court of the Russian Federation observed that accepting foreign funding by Russian non-commercial organisations participating in political activities cannot call into question the loyalty of these organisations to their State. Consequently, the legislative

construction of a foreign agent does not presume a negative estimation of such organisation from the party of the State and it is not directed towards the creation of a negative attitude to the political activities thereof.

***11. Do the decisions of your Court have binding force on other courts? Do other / ordinary courts follow / respect the case-law of your Court in all cases? Are there conflicts between your Court and other (supreme) courts?***

Legal force of the decisions of the Constitutional Court of the Russian Federation is established by the Constitution of the Russian Federation and the Federal Constitutional Law of 21 July 1994 No. 1-FKZ “On the Constitutional Court of the Russian Federation”. Thus the Constitution stipulates that acts or certain provisions thereof which were held unconstitutional cease their legal effect; international treaties of the Russian Federation being inconsistent with the Constitution of the Russian Federation shall not be implemented and applied, which implies the universally binding effect of decisions of the Constitutional Court of the Russian Federation and the place thereof in the hierarchy of national sources of law.

The Federal Constitutional Law “On the Constitutional Court of the Russian Federation” develops and specifies these constitutional provisions, establishing as a general rule the binding effect of decisions of the Constitutional Court of the Russian Federation within the whole territory of the Russian Federation in respect of all representative, executive, and judicial bodies of the State authority, bodies of local self-government, enterprises, establishments, organisations, officials, citizens and associations thereof (Article 6), as well as the final character of decisions of the Constitutional Court of the Russian Federation which cannot be appealed (Article 79, part 1).

A special significance of decisions of the Constitutional Court of the Russian Federation for the practice of general jurisdiction courts has part 5 of Article 79 of

the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, according to which a position of the Constitutional Court of the Russian Federation relating to the issue of consistency with the Constitution of the of a statute or a certain provision thereof in the sense as interpreted in the law-enforcement practice, expressed in a judgment of the Constitutional Court of the Russian Federation, including a judgment in a case on review upon a complaint on the alleged violation of constitutional rights and freedoms of citizens of constitutionality of a law applied in a concrete case, or review under a court’s request of constitutionality of a law subject to be applied in a concrete case – shall be duly considered by law-enforcement bodies from the moment, when a respective judgment of the Constitutional Court of the Russian Federation becomes effective.

In a number of its decisions the Constitutional Court of the Russian Federation has directly stated that courts are not entitled not to implement decisions of the Constitutional Court of the Russian Federation and precepts contained therein – the otherwise would mean non-observance of the requirements of the Constitution of the Russian Federation and of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation” (*rulings of 14 January 1999 No. 4-O, of 5 February 2004 No. 78-O, of 27 May 2004 No. 211-O, of 1 October 2007 No. 827-O-P, of 24 January 2008 No. 191-O-P, of 16 April 2009 No. 564-O-O, of 19 November 2015 No. 2697-O, of 28 January 2016 No. 40-O, etc.*).

The higher courts conduct the work on reconciliation of legal positions. Information concerning the most significant decisions of the Constitutional Court of the Russian Federation is included as an obligatory section in reviews of court practice elaborated and adopted by the Supreme Court which the latter sends to lower courts. In case of recognition of unconstitutionality of a legal provision, the Supreme Court judgment interpreting such a provision, as a general rule, is being revised. Thus with regard to *the Judgment of the Constitutional Court of the*



*Russian Federation of 28 May 1999 No. 9-P*, the Plenum of the Supreme Court adopted its judgment of 10 October 2001 No. 11; with regard to *the Judgment of the Constitutional Court of the Russian Federation of 13 July 2010 No. 15-P* – Judgment of 28 September 2010 No. 23. Due to the necessity of harmonisation of some judgments with the requirements of the effective legislation and positions of the Constitutional Court the Plenum of the Supreme Court adopted the Judgment of 23 December 2010 No. 31.

***12. Has your Court developed / contributed to standards for law-making and for the application of law? (e.g. by developing concepts like to independence, impartiality, acting in accordance with the law, non bis in idem, nulla poena sine lege, etc.).***

Standards of activities of legislatures and law enforcers stemming from the principle of the rule of law are always under the scrutiny of the Constitutional Court.

Being worded in general terms, these principles can quite frequently be subject to implicit violations which can occasionally be established only by the Constitutional Court. By virtue of this circumstance the Constitutional Court of the Russian Federation has elaborated an extensive practice demonstrating the examples of violation of these principles or clarifying thereof in relation to different legal institutions.

Thus the development by the Constitutional Court of the Russian Federation of the requirements of independence and impartiality of a court in criminal proceedings serves as an example of clarification of these standards. The Criminal Procedure Code of the Russian Federation in its Article 63 stipulates the rule on inadmissibility of repetitive participation of a judge in consideration of a criminal case according to which if a judge has participated in consideration of the case in

one of the instances (the first, the appellate, the cassation or the supervisory), he is not allowed to participate in subsequent consideration of the case if a decision adopted thereby was revoked. The lacuna of this provision consisted in a fact that it did not provided for the participation of the judge in proceeding in the case on other stages, primarily in respect of the pre-trial stage, where a number of questions to be decided by the judge is rather considerable. A limited amount of judges and the territorial jurisdiction rules inevitably lead to the situation where issues of criminal proceedings, different in their nature, are decided by the same judges which is not always acceptable from a perspective of the principle of impartiality.

The Constitutional Court resolved this problem by having worded the following general criterion: a new consideration of a case by the same judge is not precluded by his previous participation in the given case only when he has made decisions in respect of certain procedural matters not connected with the subject-matter of the future proceedings; a judge who has revealed his opinion, while proceedings, in respect of the matters which has become the subject of the court consideration again shall not participate in consideration of the criminal case; repetitive participation of the judge in consideration of the criminal case – inasmuch as it would be related to the evaluation of the case's circumstances previously examined with his participation – is inadmissible in all cases either during a new consideration of the case after abolishment of the first decision or after approval of such a decision expressed by a higher court instance; otherwise impartiality and objectivity of the judge might be called in question (*judgments of 2 July 1998 No. 20-P and of 23 March 1999 No.5-P; rulings of 1 November 2007 No. 799-O-O and No. 800-O-O, of 17 June 2008 No. 733-O-P*).

Proceeding from this criterion, the Constitutional Court provided a comparison – while considering respective applications – between different criminal proceedings where judges participated. Thus, in the opinion of the Constitutional Court a judge

is not precluded from participation in consideration of a criminal case on the merits by adoption of decisions relating to a pre-trial restriction (*rulings of 24 May 2005 No. 2016-O, of 25 September 2014 No. 2167-O, of 17 February 2015 No. 295-O, of 23 June 2016 No. 1350-O, of 29 September 2016 No. 1760-O, etc.*), returning of a case to the prosecutor (*rulings of 24 September 2016 No. 1266-O, of 23 June 2015 No. 1291-O, of 19 July 2016 No. 1666-O*), consideration of complaints of the participants of the proceedings (the suspect, the accused, the defender, the aggrieved person, etc.) in respect of decisions, act (omission to act) of officials or bodies of criminal prosecution (*judgments of 2 July 1998 No. 20-P and of 23 March 1999 No. 5-P, rulings of 2 July 2009 No. 1009-O-O, of 19 July 2016 No. 1602-O, etc.*), etc. At the same time, repetitive participation of the same judges of the Supreme Court of the Russian Federation in consideration of supervisory complaints of convicted persons on other supervisory court decisions adopted with the participation of these judges is inadmissible (*Ruling of 1 March 2012 No. 424-O-O*).

***13. Do you have case-law relating to respect for the rule of law by private actors exercising public functions?***

The principle of the rule of law being a fundamental principle of Russian constitutional order is binding for all subjects of legal relationships of any character without any exceptions including private persons with delegated public functions (“a state agent”). Even though the Constitutional Court in its practice has never directly addressed the issue of respect of the rule to law by the named persons, the principle is implicitly a fundamental of any decision concerning legal status of these subjects, their rights and duties.

***14. Are public officials accountable for their actions, both in law and in practice? Are there problems with the scope of immunity for some officials, e.g. by preventing an effective fight against corruption? Do you have case-law related to the accountability of public officials for their actions?***

The issues of direct bringing of the State official to legal liability, in particular, within the fight against corruption, are out of the competence of the Constitutional Court of the Russian Federation; at the same time it is necessary to note that by this moment the Constitutional Court in its decisions adopted in the course of administration of constitutional justice has not revealed any problems of constitutional level which could be legislative barriers, obstacles or obstructions in the procedure of bringing of the State officials to different types of legal liability.

#### **IV. The law and the individual**

***15. Is there individual access to your Court (direct / indirect) against general acts /individual acts? Please briefly explain the modalities / procedures.***

Individual complaint of a citizen on violation of fundamental rights and legitimate interests thereof has been considered acceptable by the Constitutional Court of the Russian Federation since the establishment thereof. This concept was already envisaged by the Law of Russian Soviet Federative Socialist Republic of 6 May 1991 “On the Constitutional Court of the RSFSR”. In accordance with the Constitution of 1993 and the newly adopted Federal Constitutional Law of 21 July 1994 № 1-FKZ “On the Constitutional Court of the Russian Federation”, the Constitutional Court, *inter alia*, began to review the constitutionality of a law applied in a concrete case upon complaints alleging violation of constitutional rights and freedoms of citizens. The Law contains a separate Chapter XII which is titled “Consideration of cases on constitutionality of laws on complaints on violation of constitutional rights and freedoms of citizens”.

From the literal sense of the given Law it followed that these are citizens of Russia, as well as foreign nationals and stateless persons who is entitled to lodge complaints alleging a violation of their constitutional rights and freedoms to the Constitutional Court. The Constitutional Court has expanded the list of such applicants by adopting a number of its decisions resulting in citizen's associations, *inter alia*, religious ones, joint stock companies, partnerships and limited liability companies, state-owned enterprises, municipal formations, national-cultural autonomies and their federal and regional units, etc. being entitled to lodge a constitutional complaint.

The current share of citizen's constitutional complaints substantially exceeds the amount of 90 percent of 19 thousand complaints and other applications being submitted to the Constitutional Court annually.

***16. Has your Court developed case-law concerning access to ordinary / lower courts (e.g. preconditions, including, costs, representation by a lawyer, time limits)?***

Relying on the principle of the rule of law, the Constitutional Court has consistently developed the accessibility to justice in the cases where such access was unavailable (as a rule, due to the absence of legislative regulation, which was interpreted in the judicial practice as excluding any such judicial review). Thus, based upon Article 46 of the Constitution of the Russian Federation, the Constitutional Court of the Russian Federation observed that the constitutional right to judicial protection, which offers the concrete guaranties of effective restoration of rights by virtue of fair justice, implies the possibility of a court challenge of acts (or omissions) and decisions of any State bodies, including the judicial ones, within the framework of judicial protection of human rights and freedoms. In a number of cases the Constitutional Court declared that the mere

absence of judicial review can lead to imbalance of values protected by the Constitution.

Following these legal positions, the Constitutional Court adopted a number of decisions creating a legal avenue for the citizens to challenge certain decisions, which could not be appealed (reviewed) in a court due to some reasons. Thus in its *Judgment of 14 July 2011 № 16-P* the Constitutional Court found the provisions of the Criminal Procedure Code of the Russian Federation stipulating such ground of termination of criminal proceedings as the death of a suspect (an accused) and the procedure of such termination, insofar as they allowed to discontinue the criminal proceedings on account of the death of a suspect (an accused) in the absence of his close relatives' consent incompatible with the Constitution of the Russian Federation. Henceforth, the criminal proceedings can only be discontinued on non-rehabilitating grounds if the suspect's (the accused's) close relatives have consented to that. If such a consent has never been granted, the criminal case shall be passed on to a court in order to be considered in accordance with the general procedure directed towards resolving the issue concerning the corresponding individual's involvement in the alleged crime.

*The Judgment of 19 November 2013 № 24-P* provided for the possibility to challenge in a court an order issued by an investigator, head of the investigation department and a prosecutor on termination of criminal proceedings on account of decriminalisation. In the given Judgment the Constitutional Court unambiguously stated that the absence of any mechanism allowing an individual in relation to whom the criminal persecution has been discontinued to bring court challenges against acts issued in the course of criminal persecution, alleging their unlawfulness and groundlessness, by preliminary investigation bodies, within the framework of contemporary criminal procedure legislation, violated the principles of the rule of law, legality, justice, humanity, equality of everyone before the law and courts and deprived citizens of the right to effective judicial protection and

also in an inadmissible manner infringed the right to protection of honour, dignity and reputation.

***17. Has your Court developed case-law on other individual rights related to the rule of law?***

The principle of the rule of law in its European interpretation implies equality of everyone before the law and courts and a prohibition of discrimination stemming from the latter.

In *the Judgment of 25 February 2016 № 6-P* the Constitutional Court declared the norms of the Criminal Procedure Code, according to which women had in fact become deprived of the right to have their criminal cases considered by a jury, incompatible with the Constitution. It was stated, in particular, that within the framework of Russian criminal law regulation system as well as criminal procedure law regulation scheme there existed a differentiation of jurisdiction over criminal cases belonging to the same category depending on the possibility of imposition of severest type of sentence (which is a life imprisonment according to modern Russian constitutional regime of non-application of capital punishment). The mere differentiation of this kind is acceptable as far as it is used by the federal legislator for the purpose of realisation of such principles as humanity and justice in the sphere of corresponding legal relationships. However, in order to achieve this goal, federal legislator is obliged to comply with the principle of legal equality, stipulated, *inter alia*, in Article 17 (part 3), Article 19 and Article 55 (part 3) of the Constitution of the Russian Federation, which guarantees the equal possibilities to exercise the right to judicial protection for men and women and, consequently, the parity as concerns the right to have the criminal case considered by a jury. The opposite solution, namely, granting the accused the right to have their criminal cases considered by a jury depending on the gender factor (to women or to men

only) would lead to violation of the constitutional guaranties of the right to judicial protection.

***18. Is the rule of law used as a general concept in the absence of specific fundamental rights or guarantees in the text of the Constitution in your country?***

The notion of the rule of law (in the absence of its textual explicit expression) has in fact been applied by the Constitutional Court while substantiating the inadmissibility of absolute (in the aspect of time and substance) bans in a number of decisions.

For example, in *the Judgment of the Constitutional Court of the Russian Federation of 10 October 2013 № 20-P* the challenged legal provisions were declared incompatible with the Constitution of the Russian Federation as constituting the grounds for the establishment of indefinite and undifferentiated limitation of passive electoral rights of Russian nationals sentenced to imprisonment for committing grave and (or) especially grave crimes.

The Constitutional Court of the Russian Federation has also been repeatedly formulating legal positions related to human and citizen personal rights, elaborating on and clarifying the substance of personal rights and freedoms, stipulated by the Constitution of the Russian Federation.

Clarifying *the Judgment of 2 February 1999 № 3-P* the Constitutional Court of the Russian Federation in *the Ruling of 19 November 2009 № 1344-O-P* reached a conclusion that on the complex moratorium on the death penalty currently in force in the Russian Federation which constituted a concretisation of the guaranties of the right to life, stipulated in the Constitution of the Russian Federation; persistent guaranties of the right not to be subjected to death penalty which had been shaped; formed legitimate constitutional and legal regime and the irreversible process



directed towards at the abolition of death penalty, this is to say at the realisation of the goal, stipulated in the Article 20 (part 2) of the Constitution of the Russian Federation, which takes place within the framework of the mentioned regime in the light of the international legal tendency and the commitments assumed by the Russian Federation. In addition the Constitutional Court of the Russian Federation has reaffirmed that the introduction of trial by jury in the whole territory of the Russian Federation does not make it possible to apply the death penalty, *inter alia*, according to an accusatory sentence, issued on the basis of verdict of a jury.

The Constitutional Court of the Russian federation has also repeatedly worded legal positions on issues concerning protection of the constitutional right to human dignity. Securing the human dignity the state is not only obliged to abstain from exercising control over private life of an individual and from interfering in it, but also to establish such regime within the existing legal order, that would allow every individual to follow customs and traditions of his choosing – ethnic and religious ones. In particular, it has to ensure the respectful attitude to the memory of the deceased, this is to say to guarantee the possibility to expect the protection of an individual's personal rights even after his death and also the abstention from encroachments on these rights by state authorities, governmental officials and private persons (*Judgment of 28 July 2007 № 8-P*).

In a number of cases the Constitutional Court of the Russian Federation has defined the constitutional and legal meaning of certain concepts that proved to be in many respects crucial for the legal effect of constitutional rights and freedoms.

Thus, in particular, the Court established that the concept of “deprivation of liberty” in its constitutional and legal meaning has the autonomous significance consisting of the requirement of conformity with the lawfulness criteria in the context of Article 22 of the Constitution of the Russian Federation and Article 5 of the Convention on protection of human rights and fundamental freedoms of every

measure envisaged by branch legislation, provided that they virtually constitute the deprivation of liberty (whether as a punishment for an offence or a coercive measure, directed towards securing the proceedings); the mentioned legal provisions constitute a normative basis for regulation of arrest, apprehension, taking into and confinement in detention in the sphere of persecution for committing criminal and administrative offences, being the measures of admissible deprivation of liberty. Despite their procedural dissimilarities apprehension, arrest, taking into and confinement in detention essentially constitute deprivation of liberty (*Judgment of the Constitutional Court of the Russian Federation of 16 June 2009 № 9-P*).