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**Synthèse / Summary / Kurzfassung / резюме**

**FÉDÉRATION DE RUSSIE / RUSSIAN FEDERATION /  
RUSSISCHE FÖDERATION / РОССИЙСКАЯ ФЕДЕРАЦИЯ**

**The Constitutional Court of the Russian Federation  
Конституционный Суд Российской Федерации**

**Anglais / English / Englisch / английский**

**THE CONSTITUTIONAL COURT  
OF THE RUSSIAN FEDERATION**

**COOPERATION  
OF CONSTITUTIONAL COURTS IN EUROPE –  
CURRENT SITUATION AND PERSPECTIVES**

**National report  
to the XVith Congress  
of the Conference of European Constitutional Courts**

Vienna, May 2014

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**I. CONSTITUTIONAL COURTS BETWEEN CONSTITUTIONAL LAW  
AND EUROPEAN LAW**

***1. Is the constitutional court obliged by law to consider European law in  
the performance of its tasks?***

Constitutional recognition of well-established principles and rules of international law, as well as of obligations derived from the international agreements of the Russian Federation, as an integral part of the national legal system predetermines consideration of the effective supranational rules, and specifically those of the European level, by the Constitutional Court of the Russian Federation (hereinafter – the Constitutional Court) when exercising the powers and authority thereof. Furthermore, the Constitution of the Russian Federation (hereinafter – the Constitution) explicitly prescribes application of the rules of an international agreement in case of antinomy of an international agreement of the Russian Federation and of a national law (Article 15.4).

Pursuant to the Constitution (Article 1.1; Article 2; Article 17.1) human rights in the Russian Federation are recognised and guaranteed in compliance with the well-established principles and rules of international law. The well-

established principles and rules of international law and the international agreements of the Russian Federation concerning human and civil rights and freedoms enjoy a priority in the national legal system. The provision stipulated in the preamble of the Constitution, regarding recognition by the Russian people itself as a part of the world community gains its normative concretisation through the recognition of the international human rights standards by the Russian Federation.

The Constitutional Court has repeatedly remarked upon the role of international law and, in particular, the European Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols thereto, as well as of Judgments of the European Court of Human Rights (hereinafter – the Conventional law) in the Russian legal system (Judgments of 4 February 1996 No. 4-II, of 25 January 2001 No. 1-II, of 5 February 2007 No. 2-II).

***2. Are there any examples of references to international sources of law, such as:***

***a) The European Convention for the Protection of Human Rights and Fundamental Freedoms.***

The European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention), as well as the Judgments of the European Court of Human Rights (hereinafter – the European Court) – to the extent that they conform to the Constitution – are an integral part of the Russian legal system.

Pursuant to the Article 15 of the Constitution the Convention is integrated into the national legal system in the capacity of an international agreement which enjoys its priority over the internal legislation. According to the Federal Law “On ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols thereto” Russia recognises the Convention as an integral part of its legal system.

The Convention, being an instrument of the European legal order effective at the national level, holds a specific place as compared to the other international agreements. Inasmuch as the rights and freedoms guaranteed by the Convention occur to be well-established, the conventional provisions act as constitutionally stipulated (in accordance with Articles 15 and 17 of the Constitution) remedial mechanism.

Therefore, the activity of the Constitutional Court results in that in the course of time the conventional provisions evolve into an instrument of constitutional-law regulation.

***b) The Charter of Fundamental Rights of the European Union.***

The Constitutional Court does not refer to the Charter of Fundamental Rights of the European Union in its decisions.

***c) Other instruments of international law at European level.***

Decisions of the Constitutional Court in statements of reasons thereof contain references to instruments (sources) of international law, effective within the following European inter-State organisations:

The Council of Europe (conventions; recommendations and resolutions of the Committee of Ministers of the Council of Europe; recommendations and resolutions of the Parliamentary Assembly of the Council of Europe; acts of recommendation, inclusive of those elaborated by the European Commission for Democracy through Law (the Venice Commission); advisory documents elaborated by associations affiliated with the Council of Europe; decisions of the European court and of the European Commission of Human Rights);

The Organization for Security and Co-operation in Europe / the Conference on Security and Co-operation in Europe (documents of meetings of the conference on the human dimension);

The Commonwealth of Independent States (conventions; model legislation, decisions of the CIS Economic Court).

*d) Other instruments of international law at international level.*

Decisions of the Constitutional Court in statements of reasons thereof contain references to instruments (sources) of international law, effective at international level within the following inter-State organisations:

The United Nations and its specialised agencies (The UN Charter; conventions concluded under the aegis of UN, including the Covenants on Human Rights, as well as Optional Protocols thereto; resolutions and declarations of the UN General Assembly, inclusive of the Universal Declaration of Human Rights; the UN Security Council resolutions; the Commission on Human Rights resolutions; comments and views adopted by the Human Rights Committee, UNESCO recommendations; documents, including acts of recommendation, of for a conducted under the aegis of UN);

The International Labour Organization (conventions, inclusive of those not ratified by the Russian Federation, recommendations, general surveys);

FATF (The Financial Action Task Force (on Money Laundering) – an international inter-governmental body for combating criminal money laundering and terrorist financing) (recommendations).

Therewithal, decisions of the Constitutional Court contain a number of references to the following documents of international law: the Geneva Conventions on international humanitarian law of 12 August 1949 and Additional Protocols thereto; the Rome Statute of the International Criminal Court; acts adopted on the basis of occupation law or occupational jurisdiction in Germany from 1945 to 1949; acts of international organisations, which Russia is not a member of (for instance, Protocol to the American Convention on Human Rights to Abolish the Death Penalty). Decisions of the Constitutional Court as well contain references to a number of acts elaborated by international conferences.

***3. Are there any specific provisions of constitutional law imposing a legal obligation on the constitutional court to consider decisions by European courts of justice?***

As noted above, Russia is bound by an obligation stipulated in Article 46.1 of the Convention and substantiated at the level of national legislation (Federal Law of 03 March 1998 No. 54-FZ) to enforce final and binding decisions of the European Court rendered in cases, which Russia occurred to be a party in.

***4. Is the jurisprudence of the constitutional court influenced in practice by the jurisprudence of European courts of justice?***

Perceiving that the interests of human rights protection dictate application of not only the national legal instruments, the Constitutional Court extensively exploits the European Court case-law in course of its own activity.

The Constitutional Court reinforces argumentation of the decisions rendered thereby with the assertions borrowed from decisions of the European Court. Such a method of argumentation significantly facilitates similarity of the constitutional and conventional values.

When confirming constitutionality of a legal provision or when abrogating it, as well as when revealing the constitutional-law sense thereof, the Constitutional Court exploits legal opinions of the European Court, concerning the respective range of issues, as an additional argument.

The European Court approaches are exploited within the constitutional practice, particularly, through adverting to the European Court interpretation of the Convention provisions, by virtue of perception the sense of rules, principles and institutions appearing in the European Court decisions, without direct references thereto. Therewithal, the general approaches of the European Court regarding a given range of issues are taken into consideration.

Within the constitutional practice the first and foremost regard is paid to the decisions of the European Court, in which Russia is held liable for violation

of the Convention. However, the Constitutional Court does not limit the legal force of the European Court decisions in matters of interpretation of the Convention only to those cases in which Russia occurs to be a party in, and believes that such acts are to be considered by national authorities regardless of which State they are adopted with respect to, provided that they conform the Constitution, as well as well-established principles and rules of international law.

In its entirety the Constitutional Court case law contributes to adaptation of the European Court legal approaches to the realities of the national legal system.

References to the case-law of the Court of Justice of the European Union are absent in the decisions of the Constitutional Court, which is attributable to non-participation of Russia in the given integrative formation.

***5. Does the constitutional court in its decisions regularly refer to the jurisprudence of the Court of Justice of the European Union and/or the European Court of Human Rights? Which are the most significant examples?***

As previously stated, the Constitutional Court substantiates its findings with references to the European Court case-law, inclusive of cases concerning other States. Particularly, an advert to the European Court case-law occurred in the context of issues of accessibility and effectiveness of remedies at the national level; a right to free elections; a right to freedom of; providing for equality of public institutions and private persons in course of enforcement proceedings; limitation to bringing to tax responsibility; preliminary participation of administrative bodies in execution of jurisdictional function; adoption of guarantees against arbitrary arrest or putting in custody and *etc.*

Besides that, the Constitutional Court applies legal opinions of the European Court, developing and improving the substance of its own legal opinions, inclusive of those concerning *the basic principles of law*, which directly influence on the maintenance of the constitutional legal order.

**6. Are there any examples of divergences in decisions taken by the constitutional court and the European courts of justice?**

Cooperation of the European Court and of a constitutional justice authority operating at a national level, notwithstanding the unity of aims of foundation and operation thereof – ensuring protection of human and civil rights and freedoms – nevertheless is not deprived of certain contradictions.

While pointing out in its decisions the significance of the constitutional right to appeal to inter-State bodies of protection of human rights and freedoms if all the available domestic remedies have been exhausted, the Constitutional Court alongside with that relies upon the principal provision that the people-sovereign having declared the international law principles and rules and international agreements as a consistent part of the national legal system reserved and could not but reserve the indisputable supremacy for the Constitution. Therefore, the influence of international institutions on the national legal system and, in particular, on the constitutional-law relationships, is not boundless. The primary responsibility for determination of such bounds rests with the Constitutional Court.

The first and, probably, the sole resonant example of contradictions in the approaches of European and constitutional justice was the “*case of Markin*”. The Constitutional Court refused to admit his complaint to examination, having denoted that Russian legal regulation, which entitles female military servants to an opportunity of a nursing leave until a child attains a three-years age and, as a general rule does not recognise such a right of male military serviceman, does not infringe the provisions of the Constitution regarding the equality of rights and freedoms irrespective of gender (Ruling of 15 January 2009 No. 187-O-O). Contrawise, the European Court in its decision in the case of “*Konstantin Markin v. Russia*” of 7 October 2010 was critical about a thesis announced in the decision of the Constitutional Court regarding a special, connected with maternity role of women in the society, and considered the perception of women

as prime fosterer of children a “gender prejudice”, which causes discrimination in exercising the right to respect for family life.

Notwithstanding the revealed in the recent time certain contradictions in European and constitutional practice, the Constitutional Court remains a dedicated supporter of a permanent dialogue with the European Court. In particular, it takes a favourable view of the outlined benchmarks for the development of mutual cooperation at the new stage. Particularly, the new decision in the case of *Markin* rendered in March 2012 by the Grand Chamber of the European Court is implied. Compared with the preceding decision the requirements of amending legislation were eliminated and the polemic concerning legal approaches practiced within the national legal system (and, particularly, legal opinions of the Constitutional Court) was significantly softened.

***7. Do other national courts also consider the jurisprudence of European courts of justice as a result of the constitutional court taking it into consideration in its decisions?***

Russian courts, in accordance with the Constitution (Articles 15, 120) treat the interpretation of the Convention by the European Court as obligatory, considering that the Constitutional Court supports such interpretation in all the cases to the extent that it does not contradict the Constitution as the legal act of highest legal power. The obligation of the national law-enforcement authorities to accept legal opinions of the European Court in course of interpretation and application of the Convention is limited only by the obligation of respecting the supremacy of the Constitution (including the decisions of the Constitutional Court revealing the sense thereof) in the system of legal acts, the Convention is implemented to in capacity of an international agreement of the Russian Federation.

The obligatoriness of consideration of the European Court case-law, which is determined by recognition by Russia its binding jurisdiction in the

issues of interpretation and application of the Convention and Protocols thereto, is as well confirmed by the acts of the national highest judicial authorities.

***8. Are there any examples of decisions by European courts of justice influenced by the jurisprudence of national constitutional courts?***

An address by the European Court concerning jurisprudence of national judicial bodies comprises (alongside with an address by national courts in their decisions concerning jurisprudence of the European Court) main content of the interaction between the European Court and bodies of national jurisdiction. Due to absence of the institutional and procedural hierarchy between them this interaction is being generally called as “dialogue”.

The European Court addresses concerning legal attitudes of the Constitutional Court as the one of sources of the national law just in some situations.

Firstly where national constitutional court proceedings are immediate subject of an application filed with the Strasbourg Court.

Secondly where passing stages of the national constitutional court proceedings is the one of actual circumstances in a case of an applicant and very that fact is just laconically noted by the European Court in its judgment, for examples, if an applicant applied to the Constitutional Court but the application was adjudged inadmissible.

Thirdly where the European Court refers to decisions of the Constitutional Court as a source of the national law, which has significance for considering an application filed with the European Court. Such situation is most spread.

With the lapse of years there is being more shown the tendency of addressing by the European Court not concerning one or another separate act of the Constitutional Court, but concerning aggregation of the latest’s decisions developing appropriate legal attitude.

## **II. INTERACTIONS BETWEEN CONSTITUTIONAL COURTS**

***1. Does the constitutional court in its decisions refer to the jurisprudence of other European or non-European constitutional courts?***

In its acts the Constitutional Court does not refer to decisions of other courts including constitutional courts which are operating at national level (though in very rare instances it is possible to see references to a foreign constitutional practice in dissenting opinions of the Justices of the Constitutional Court).

Meanwhile within structure of the Secretariat of the Constitutional Court there is operating the special unit for study and generalization of a foreign constitutional control practice which, where there is a necessity for studying a comparative legal aspects of the matter being a subject of proceedings in the Constitutional Court, is preparing (as a rule under a request of the reporter Justice) the surveys on decisions of foreign constitutional control bodies, first of all, European constitutional courts, as to appropriate themes.

Besides issuing the thematic surveys there are being issued surveys on decisions of constitutional control bodies of concrete countries in order to make the Justices of the Constitutional Court and members of the Secretariat of the Constitutional Court aware of actual tendencies of foreign constitutional courts' practices.

***2. If so, does the constitutional court tend to refer primarily to jurisprudence from the same language area?***

As it follows from the answer to the previous question, decisions of the Constitutional Court are not containing references to a foreign constitutional practice whether there are any criteria (including linguistic characteristics).

***3. In which fields of law (civil law, criminal law, public law) does the constitutional court refer to the jurisprudence of other European or non-European constitutional courts?***

In the course of an elaboration of draft decisions and other draft acts of the Constitutional Court there are being taken into account the materials contained in the thematic surveys on a foreign constitutional control practice which are being issued by analysis units of the Secretariat of the Constitutional Court. The first direction of the surveys on a foreign constitutional control practice consists in general problematic of a constitutional law. The second direction of the surveys consists in problematic of personal rights. The third direction consists in problematic of political rights. The fourth direction consists in problematic of social and labor rights. The fifth direction consists in problematic of economic rights. The sixth direction consists in problematic of procedural and institutional guarantees of rights and freedoms. Finally the seventh direction is dedicated to several aspects of judicature including a functioning of constitutional justice.

***4. Have decisions of the constitutional court noticeably influenced the jurisprudence of foreign constitutional courts?***

The influence of the Constitutional Court being confirmed by direct references to judgments and rulings of the latest is being seen in jurisprudence of constitutional courts of some member States of the Commonwealth of Independent States. The references to jurisprudence of the Constitutional Court can be sometimes seen in dissenting opinions of justices of constitutional courts of several member States of the Commonwealth of Independent States (for example, the Dissenting opinion of Justice of the Constitutional Court of the Ukraine V.E. Skomorokh to decision of the Constitutional Court of the Ukraine of 25 November 1997 “On interpretation of Article 55(2) of the Constitution of the Ukraine and section 248-2 of the Civil Procedure Code of the Ukraine (right to appeal from illegal actions of an official to a court)”).

***5. Are there any forms of cooperation going beyond the mutual acknowledgement of court decisions?***

The official and academic events being held jointly, the various forms of mutual interaction (visiting by the delegates, discussing the matters of mutual interests including in periodical professional journals etc.) should be called as another forms of cooperation beyond the mutual acknowledgement of court decisions.

### **III. INTERACTIONS BETWEEN EUROPEAN COURTS IN THE JURISPRUDENCE OF CONSTITUTIONAL COURTS**

*1. Do references to European Union Law or to decisions by the Court of Justice of the European Union in the jurisprudence of the European Court of Human Rights have an impact on the jurisprudence of the constitutional court?*

*2. How does the jurisprudence of constitutional courts influence the relationship between the European Court of Human Rights and the Court of Justice of the European Union?*

*3. Do differences between the jurisprudence of the European Court of Human Rights, on the one hand, and the Court of Justice of the European Union, on the other hand, have an impact on the jurisprudence of the constitutional court?*

Any questions of this title imply the negative answers as Russia is not a member of the European Union and is not also having associative relations with the latest (therefore even the Constitutional Court in its decisions is not referring to jurisprudence of the Court of Justice of the European Union).