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# **CONSTITUTIONAL JUSTICE: FUNCTIONS AND RELATIONSHIP WITH THE OTHER PUBLIC AUTHORITIES**

*National report prepared for the XVth Congress  
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The Constitutional Court of the Russian Federation*

## **I. THE CONSTITUTIONAL COURT'S RELATIONSHIP TO PARLIAMENT AND GOVERNMENT**

- 1. The role of Parliament (as the case may be, of the Government) in the procedure for appointing judges to the Constitutional Court. Once appointed, can judges of the Constitutional Court be revoked by that same authority? What could be the grounds/ reasons for such revocation?**

According to Article 9 of the Federal Constitutional Law «On the Constitutional Court of the Russian Federation» judges of the Constitutional Court shall be appointed by the Federation Council individually by secret ballot upon the submission of the President of the Russian Federation.

The termination of powers of a judge of the Constitutional Court of the Russian Federation shall be effected by the Federation Council upon the submission of the Constitutional Court in case of the violation of the procedure of his appointment as a judge of the Constitutional Court as established by the Constitution of the Russian Federation and the said Federal Constitutional Law; and in case of the commission by the judge of an act defamatory to the honor and dignity of judge (in this case the submission shall be adopted by the qualified majority of votes - of not less than two thirds of judges of the Constitutional Court). In other clearly specified cases the termination of powers shall be implemented directly by a decision of the Constitutional Court.

- 2. To what extent is the Constitutional Court financially autonomous - in the setting up and administration of its own expenditure budget?**

Article 124 of the Constitution of the Russian Federation provides for general guarantee of financial independence of courts, stating that they shall be financed only from the federal budget, and that the funding should ensure the possibility of the complete and independent administration of justice in accordance with federal law.

Pursuant to Article 7 of the Federal Constitutional Law «On the Constitutional Court of the Russian Federation» funding of the Constitutional Court of the Russian Federation shall be provided for in the federal budget and shall ensure an independent and comprehensive carrying out of constitutional judicial proceedings. The federal budget shall annually allocate in a separate item funds needed to ensure functioning of the Constitutional Court which shall be managed by the Constitutional Court autonomously. Spending estimates of the Constitutional Court may not be reduced as compared to the preceding financial year.

**3. Is it customary or possible that Parliament amends the Law on the Organization and Functioning of the Constitutional Court, yet without any consultation with the Court itself?**

There is such a possibility since neither the Constitution of the Russian Federation, nor the Federal Constitutional Law «On the Constitutional Court of the Russian Federation» provide for the obligation of the legislature to consult the Constitutional Court prior to amending the law on its organization and functioning. At the same time basic parameters of functioning of the Constitutional Court are enshrined in the Constitution of the Russian Federation (Article 125). In practice, consultations involving the Constitutional Court take place as regards legislative initiatives related to its organization and functioning.

**4. Is the Constitutional Court vested with review powers as to the constitutionality of Regulations/ Standing Orders of Parliament and, respectively, Government?**

Pursuant to Article 125.2 of the Constitution of the Russian Federation the Constitutional Court shall decide, inter alia, on cases on conformity with the Constitution of the Russian Federation of normative acts of the Federation Council, the State Duma, and the Government of the Russian Federation. This provision is reproduced in Article 3 of the Federal Constitutional Law «On the Constitutional Court of the Russian Federation». Thus, Regulations/Standing Orders of the Parliament and the Government, as their normative acts, may be the subject-matter of the Constitutional Court.

**5. Constitutionality review: specify types / categories of legal acts in regard of which such review is conducted.**

Pursuant to Article 125 of the Constitution of the Russian Federation and Article 3 of the Federal Constitutional Law «On the Constitutional Court of the Russian Federation» the Constitutional Court, at the request of the President of the Russian Federation, the Federation Council, the State Duma, one fifth of the members of the Federation Council or of the deputies of the State Duma, the Government of the Russian Federation, the Supreme Court of the Russian Federation and the Supreme Arbitration Court of the Russian Federation, and legislative and executive bodies of entities of the Russian Federation, shall decide on cases on conformity with the Constitution of the Russian Federation:

- a) federal laws, normative acts of the President of the Russian Federation, the Federation Council, the State Duma, and the Government of the Russian Federation;
- b) constitutions of republics, charters, and laws and other normative acts of entities of the Russian Federation, adopted on issues under the jurisdiction of

- State bodies of the Russian Federation or under the joint jurisdiction of State bodies of the Russian Federation and State bodies of entities of the Russian Federation;
- c) treaties between State bodies of the Russian Federation and State bodies of entities of the Russian Federation, treaties between State bodies of entities of the Russian Federation;
  - d) international treaties of the Russian Federation which are not in force.

On complaints against violation of constitutional rights and freedoms of citizens and organizations, and at the request of courts the Constitutional Court shall verify the constitutionality of a law, which has been applied or is to be applied in a particular case.

- 6. a) Parliament and Government, as the case may be, will proceed without delay to amending the law (or another act declared unconstitutional) in order to bring such into accord with the Constitution, following the constitutional court's decision. If so, what is the term established in that sense? Is there also any special procedure? If not, specify alternatives. Give examples.**

Article 80 of the Federal Constitutional Law «On the Constitutional Court of the Russian Federation» regulates this issue as follows.

If a provision of a federal constitutional law or a federal law (or several such provisions) has been found unconstitutional in its entirety or partially by a decision of the Constitutional Court, or if a need to eliminate a lacunae in legal regulation proceeds from a decision of the Constitutional Court, the Government of the Russian Federation shall, not later than three months after publication of the decision of the Constitutional Court, introduce to the State Duma a new draft federal constitutional law, or a new draft federal law, or several linked new draft laws, or a draft law amending the law found partially unconstitutional. The said draft laws shall be considered by the State Duma extraordinarily.

If a provision of a normative act of the Government of the Russian Federation has been found unconstitutional in its entirety or partially by a decision of the Constitutional Court, or if a need to eliminate a lacunae in legal regulation proceeds from a decision of the Constitutional Court, the Government of the Russian Federation shall, not later than two months after publication of the decision of the Constitutional Court, abrogate its normative act and either adopt a new normative act or introduce amendments and/or supplements to the normative act found partially unconstitutional.

**6. b) Parliament can invalidate the constitutional court's decision: specify conditions.**

According to Article 79 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation" a decision of the Constitutional Court shall be final, may not be appealed and shall come into force immediately upon pronouncement. It shall be applicable directly and shall require no confirmation by other bodies or officials. The legal force of a judgment of the Constitutional Court on unconstitutionality of an act may not be overruled by the new adoption of the same act.

**7. Are there any institutionalized cooperation mechanisms between the Constitutional Court and other bodies? If so, what is the nature of these contacts / what functions and powers shall be exerted on both sides?**

According to Article 50 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation" requests of the Constitutional Court to submit texts of enactments and other legal acts, documents and their copies, case files, information and other materials; to certify documents and texts of enactments; to carry out checkups, studies and expert findings; to establish certain circumstances; to involve specialists; to provide explanations, consultations, and professional opinions on cases under consideration, shall be binding for all bodies, organizations and persons to whom they may be addressed.

There are also plenipotentiary representatives of the President of the Russian Federation, of the Federation Council, of the State Duma, of the Government of the Russian Federation, of the Ministry of Justice of the Russian Federation and of the Prosecutor General's office of the Russian Federation acting before the Constitutional Court.

## **II. RESOLUTION OF ORGANIC LITIGATIONS BY THE CONSTITUTIONAL COURT**

### **1. What are the characteristic traits of the contents of organic litigations (legal disputes of a constitutional nature between public authorities)?**

The Constitutional Court of the Russian Federation may directly solve disputes about competence between bodies of State power (disputes about competence in the narrow sense), and also may solve issues concerning competence in the course of review of constitutionality of respective normative act, while determining whether or not that act was enacted within the competence defined in the Constitution of the Russian Federation.

The Federal Constitutional Law “On the Constitutional Court of the Russian Federation” makes provisions for disputes about competence (in the narrow sense) in the special Chapter defining the following traits:

- 1) admissibility of the application:
  - the disputed competence is defined by the Constitution of the Russian Federation;
  - the dispute does not concern the question of jurisdiction of courts over the case;
  - the dispute has not been settled or cannot be settled by other means;
  - the compulsory use of a preliminary complaint or a reconciliation procedure to settle the dispute (depending on the applicant’s status).
- 2) Limits of the verification: the Constitutional Court shall consider disputes about competence exclusively from the perspective of the separation of State power into the legislative, executive, and judicial and of the delineation of jurisdiction and powers between bodies of State power.

### **2. Specify whether the Constitutional Court is competent to resolve such litigation.**

The Constitutional Court of the Russian Federation is the sole State authority that is competent to resolve such disputes in judicial proceedings.

### **3. Which public authorities may be involved in such disputes?**

Such disputes, by virtue of Article 125 of the Constitution of the Russian Federation, may occur:

- a) between federal bodies of State power;
- b) between bodies of State power of the Russian Federation and bodies of State power of entities of the Russian Federation;
- c) between superior bodies of State power of entities of the Russian Federation.

- 4. Legal acts, facts or actions which may give rise to such litigations: do they relate only to disputes on competence, or do they also involve cases when a public authority challenges the constitutionality of an act issued by another public authority? Whether your constitutional court has adjudicated upon such disputes; please give examples.**

The ground for petitioning the Constitutional Court of the Russian Federation with an application to settle a dispute about competence may be any legal act or action of a body of State power, the enactment or commitment of which violates the competence of another body of State power. At the same time certain normative legal acts (see Section 1, Question 5 above) can be assessed by the Constitutional Court not within a dispute about competence, but in the procedure of challenging normative legal acts (including the cases when the applicant is a State body).

Moreover, there is an institute of confirmation of the constitutionality of a normative legal act in the constitutional proceedings in the Russian Federation. The request, by virtue of Article 85.1 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, to the Constitutional Court to verify the constitutionality of a normative act of a body of State power is admissible, inter alia, if the petitioner deems the provisions of this act enforceable notwithstanding the official decision of a federal body of State power on the refusal to apply and to execute them as not being in conformity with the Constitution of the Russian Federation.

- 5. Who is entitled to submit proceedings before the Constitutional Court for the adjudication of such disputes?**

According to Article 92 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation” the dispute about competence (in the narrow sense) may be initiated by bodies of State power of the Russian Federation and bodies of State power of entities of the Russian Federation, as well as by the President of the Russian Federation in the case when no consensual decision on disagreement between bodies of State power and bodies of State power of entities of the Russian Federation, between bodies of State power of entities of the Russian Federation has been reached. The subjects entitled to submit proceedings concerning verification of the constitutionality of a normative act (within which issues of competence are also examined), are listed in the reply to Question 5 of Section 1 above.

- 6. What procedure is applicable for the adjudication of such dispute?**

In constitutional proceedings the same procedure, that exists for verification of the constitutionality of normative acts, is applicable to the settlement of disputes about competence (in the narrow sense).

**7. What choices are there open for the Constitutional Court in making its decision (judgment). Examples.**

The Constitutional Court of the Russian Federation, in the result of the consideration of merits of a case, shall pass one of the two possible decisions: either a decision confirming the power of a respective body of State power to issue an act or to commit an action of legal nature, which was the reason for the dispute about competence; or a decision denying the power of a respective body of State power to issue an act or to commit an action of legal nature, which was the reason for the dispute about competence. If the Constitutional Court finds the enactment of an act not compatible with the competence of a body of State power which has enacted it, this act shall be null and void from the date specified in the decision.

If an applicant withdraws his request prior to the beginning of the consideration of a case (for example, due to the settlement of a dispute about competence) the proceedings shall be ceased.

In the result of the consideration of a request or a complaint to verify the constitutionality of a norm the Constitutional Court shall pass one of the following decisions:

- 1) to find a norm (entirely or partially) unconstitutional;
- 2) to find a norm constitutional;
- 3) to find a norm (entirely or partially) constitutional in the light of its constitutional legal meaning, revealed by the Constitutional Court (see the detailed definition of the constitutional legal meaning in the reply to the next Question, as connected with the enforcement of decisions of the Constitutional Court).

**8. Ways and means for implementing the Constitutional Court's decision: actions taken by the public authorities concerned afterwards. Examples.**

A decision of the Constitutional Court of the Russian Federation can be implemented in the legal system of the Russian Federation in following ways:

1) If a normative provision has been found unconstitutional, it shall not be applied by courts and other jurisdictional bodies from the date of the entry into force of the decision of the Constitutional Court.

2) If the need to eliminate a lacuna in legal regulation results from a decision of the Constitutional Court, the Constitutional Court shall draw the attention of the legislature to it.

Example: Judgment of the Constitutional Court of 19 March 2010, No. 7-II.

3) If a normative provision has not been found unconstitutional, while the Constitutional Court has revealed its constitutional legal meaning (it happens in cases where the content of a norm can be interpreted in different ways, either due to uncertainty of the text of the norm, or with regard to the relevant system of legal regulation), i.e. the Court has indicated how the text of the disputed norm should be interpreted in view of the ultimate priority of constitutional principles and values, this decision of the Constitutional Court shall be implemented through the actions of other courts, which in applying this norm must take into consideration its meaning as revealed by the Constitutional Court.

Examples: Judgments of the Constitutional Court of 24 February 2004, No. 3-II; 24 March 2009, No. 6-II; 26 February 2010, No. 4-II; and others.

### III. ENFORCEMENT OF CONSTITUTIONAL COURT'S DECISIONS

1. The Constitutional Court's decisions are:

- a) final;
- b) subject to appeal; if so, please specify which legal entities/subjects are entitled to lodge appeal, the deadlines and procedure;

According to Article 79.1 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation" decisions of the Constitutional Court shall be final and may not be subject to appeal.

- c) binding *erga omnes*;
- d) binding *inter partes litigantes*.

According to Article 6 of the said Federal Constitutional Law decisions of the Constitutional Court shall be obligatory throughout the territory of the Russian Federation for all representative, executive and judicial bodies of State power, bodies of local self-government, enterprises, agencies, organizations, officials, citizens and their associations.

At the same time the acknowledgment of non-conformity of certain provisions of a normative act or of an treaty with the Constitution of the Russian Federation, according to Article 87 of the said Federal Constitutional Law, shall make grounds for the abrogation in the prescribed procedure of the identical provisions of other normative acts or treaties. These provisions may not be applied by courts, other bodies and officials.

Moreover, according to the said Federal Constitutional Law (Article 79.3) decisions of courts and of other bodies based on the acts found unconstitutional shall not be executed and shall be reviewed in cases stipulated by federal law.

As regards the parties to constitutional proceedings, Article 100 of the said Federal Constitutional Law stipulates that if the Constitutional Court acknowledges the non-conformity of the law applied in a particular case with the Constitution of the Russian Federation, this case shall in any event be subject to revision by a competent body in accordance with the prescribed procedure.

Decisions of courts based on the acts found unconstitutional by the Constitutional Court may be subject to revision also in relation to cases of other persons concerned, even if they were not the parties to the constitutional proceedings. Such a revision can involve all procedures provided for in respective procedural legislation. If a norm has been found unconstitutional, revision of courts' decisions is possible, in particular, both in procedure of supervisory review, and if there is evidence of newly discovered facts.

2. **As from publication of the decision in the Official Gazette/Journal, the legal text declared unconstitutional shall be:**
  - a) **repealed;**
  - b) **suspended until when the act/text declared unconstitutional has been accorded with the provisions of the Constitution;**
  - c) **suspended until when the legislature has invalidated the decision rendered by the Constitutional Court;**
  - d) **other instances.**

According to Article 79 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation” normative provisions found unconstitutional shall be null and void after the pronouncement of the respective decision of the Constitutional Court. The abrogation of unconstitutional provisions shall not annul the obligation of respective law-making body, which has adopted the provisions found unconstitutional, to remove them from the legal system following the procedure and time limits established by the said Federal Constitutional Law (Article 80). Depending on the normative provisions found unconstitutional in their entirety or partially, this obligation can be respected in various ways (by adopting a new act, by introducing amendments to the existing act, or by abolishing it). Until a new normative act has been enacted, the Constitution of the Russian Federation shall be applied directly.

In situation when the immediate abolishment of normative provisions is likely to have a negative effect on the balance of constitutional values, the Constitutional Court may suspend the execution of its decision and specify a particular date for abrogation of normative provisions found unconstitutional, as provided for by Article 75 of the said Federal Constitutional Law.

3. **Once the Constitutional Court has passed a judgment of unconstitutionality, in what way is it binding for the referring court of law and for other courts?**

As already mentioned above in reply to Question 1 of Section 3, in accordance with the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, once the Constitutional Court has passed a judgment of unconstitutionality, normative provisions found unconstitutional shall not be applied by courts and their decisions based on unconstitutional acts shall not be executed and shall be subject to revision in cases stipulated by federal law.

4. **Is it customary that the legislature fulfills, within specified deadlines, the constitutional obligation to eliminate any unconstitutional aspects as may have been found- as a result of *a posteriori* and/or *a priori* review?**

The Constitutional Court of the Russian Federation exercises constitutional review *a posteriori* (it is authorized to review the constitutionality of acts that have been adopted and promulgated).

If a normative provision has been found unconstitutional by the Constitutional Court, the federal legislature, as a rule, secures the enforcement of such decision within the deadlines set by the Federal Constitutional Law “On the Constitutional Court of the Russian Federation” (Article 80).

**5. What happens if the legislature has failed to eliminate unconstitutional flaws within the deadline set by the Constitution and/or legislation? Give examples.**

Since decisions of the Constitutional Court of the Russian Federation are directly applicable and require no affirmation by other bodies and officials, practical realization of normative provisions found unconstitutional is ruled out, even if the legislature has not taken the appropriate steps to eliminate respective flaws.

The Federal Constitutional Law “On the Constitutional Court of the Russian Federation” also provides for legal liability related to non-execution of decisions of the Constitutional Court: according to Article 81 non-execution, improper execution or prevention of execution of a decision of the Constitutional Court shall entail liability under federal law.

The Criminal Code of the Russian Federation (Article 315) makes provisions also for criminal liability for non-execution of court decisions. At the same time, there have been no precedents in practice regarding non-execution of the Constitutional Court’s decisions.

A mechanism of implementation of the legal liability (the constitutional liability in this particular case) is only envisaged in relation to respective bodies of State power and officials of entities of the Russian Federation, providing for measures such as a dissolution of the legislative (representative) body of State power or a discharge of the chief official of an entity of the Russian Federation (as stipulated in particular by Articles 3.1, 29.1 of the Federal Law No. 184-FZ of 6 October 1999 “On general principles of organization of legislative (representative) and executive bodies of State power of entities of the Russian Federation”).

**6. Is legislature allowed to pass again, through another normative act, the same legislative solution which has been declared unconstitutional? Also state the arguments.**

According to Article 79.2 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation” the legal force of a decision of the Constitutional Court declaring an act unconstitutional may not be overruled by the new adoption of the same act (containing the same provisions).

**7. Does the Constitutional Court have a possibility to commission other state agencies with the enforcement of its decisions and/or to stipulate the manner in which they are enforced in a specific case?**

The Constitutional Court of the Russian Federation is not empowered to directly secure the enforcement of its decisions. The obligation to comply with the Constitutional Court's decisions is established in the Constitution of the Russian Federation and in the Federal Constitutional Law "On the Constitutional Court of the Russian Federation". Decisions of the Constitutional Court on unconstitutionality of legal provisions just make reference to respective articles of the Federal Constitutional Law concerning the duty to execute Court's decisions in due way and within established time limits. There are no established procedural means that would allow the Constitutional Court to respond to the non-execution of its decisions.

The Constitutional Court is empowered to indicate the procedure, time limits and specifics of the execution of its decision (Article 75.1 of the said Federal Constitutional Law). At the same time epy Constitutional Court shall rule exclusively on matters of law and shall refrain from establishment of actual facts whenever this falls within competence of other courts or other bodies.