

# Judicial review of individual complaints within the framework of constitutional proceedings: experience of the Russian Federation

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## **General information**

1. Review of applications lodged by individuals and their associations and also of other petitions (requests of courts, complaints by the authorised officials), similar to the latter legal concept and equally aimed at protection of individual rights in connection with specific cases, performed by the Constitutional Court of the Russian Federation (hereinafter – the Constitutional Court) represents its primary instrument to influence the law-making as well as the case law in the sphere of regulation and protection of fundamental rights and liberties.

In general terms, the right to file a complaint subject to consideration by way of concrete constitutional review is enshrined in the Constitution of the Russian Federation (Section 4 of Article 125). Detailed regulation is provided for by the special Act, which is the Federal Constitutional Law “On the Constitutional Court of the Russian Federation” (hereinafter – the Act). This right of petition is primarily conferred upon citizens and their associations, provided their rights and liberties are being violated by a normative act (a law) that has been applied in their specific case.

Additionally, the right to apply to the Constitutional Court for the protection of constitutional rights of citizens and their associations is vested upon the Prosecutor General of the Russian Federation and the Human Rights Ombudsman of the Russian Federation. However, such an application should also be linked to the individual case. Consent of the protected citizen (association) is not the necessary requirement of lodging the application in

question. That being so, the Prosecutor General rarely invokes such right of petition to file a complaint of the mentioned kind, while the Human Rights Ombudsman tends to apply the respective power in a much more active manner.

In 2014 the new admissibility requirement for lodging the kind of complaint under consideration has been adopted: it has to be filed within a year after the case involving the disputed law has been closed. For the purpose of defining the starting date of the named one-year term the case is considered closed from the day of entry into force of a court sentence or of a court judgment. This requirement is aimed at securing the fundamental principle of legal certainty.

2. Constitutional case law influences every aspect of constitutional appeal in a very significant manner.

In this connection one should notice the widening of the spectrum of legal acts subject to appeal by private persons by considering certain nonlaws as laws. For example the review of constitutionality of a decree on amnesty issued by the State Duma of Russia has been declared acceptable, because in the aspect of its legal substance it could be equated to law, and also bearing in mind that in practice amnesty acts' validity is viewed by the courts as identical to that of a law (Judgment № 11-P of 5 July 2001). It has also been found that not only a federal law but also a normative act issued by Russian Government could be subjected to constitutionality review provided there is a direct normative connection between the latter act and the federal law under consideration and both of these legal acts have been or shall be applied as inseparably linked in the context of a particular case (Judgments № 1-P of 27 January 2004; № 8-P of 14 May 2009).

Besides the broad interpretation of the spectrum of objects of constitutional review the fulfilment of potential of Russian version of constitutional complaint is progressing through the gradual amplification of circle of entities authorised to apply to the Constitutional Court.

Thus, the Constitutional Court has concluded that the law contains no special requirements as concerns the applying citizen's legal status in the aspect of this person's legal capacity (Judgment № 4-P. of 27 February 2009).

Furthermore, the Constitutional Court proceeds from the conviction that the concept of citizens entitled to do so shall not be formally limited to

actual nationals of the Russian Federation but shall also comprise foreign nationals and stateless persons (with the obvious exception of cases specifically stipulated by certain provisions of the Constitution).

Additionally, the Constitutional Court has adopted a pretty broad interpretation of such concept as “associations of citizens” which constitute one of the entities entitled to lodge a constitutional complaint. This concept comprises in particular: religious associations, joint-stock companies, partnerships and limited liability companies, state enterprises, municipalities. In addition, the enumerated associations are entitled to recourse to the constitutional complaint procedure in order to protect the fundamental rights of their members as well as for the sake of ensuring the rights of association itself.

3. The improvement of constitutional court proceedings is closely connected with development of the procedure of reviewing individual and collective complaints. Thanks to the changes introduced in recent years it is now possible to examine complaints of a certain kind without holding any court hearings (Article 47.1 of the Act). In order to do so the Court shall establish that: firstly, the question of constitutionality of a disputed act can be resolved on the basis of legal positions that has been formulated previously and are contained in earlier adopted judgments, and, secondly, that holding of a hearing is not necessary for ensuring rights of a petitioner. All the central principles of constitutional process, including those of adversarial proceedings and equality of arms, apply to this new form of procedure, wherein the applicant is entitled to file a petition in order to object to implementation of the latter.

The limitation relating to possibility of considering cases without holding any court hearings, namely the requirement of homogeneity between the disputed provisions of a normative act and norms declared unconstitutional by a judgment of the Constitutional Court, has been abolished. One should notice, that even before such an annulment the Constitutional Court was entitled to a pretty wide scope of discretion as concerns the establishment of the mentioned homogeneity (by way of comparing the substance of a disputed normative act or of certain provisions therein with its previously formulated legal positions attaining a fundamental importance for the assessment of a challenged norm).

The eventual amplification of the Court’s discretion sphere as concerns the attribution of certain cases as subject to consideration without holding

any hearings, while contributing to procedural economy, has, figuratively speaking, greatly improved the “throughput” of the Constitutional Court. Whereas this results in much higher (in relation to previous periods) amount of protection of rights of individual and collective applicants as well as more ambitious correction of deficiencies in the spheres of law-making and caselaw. This, in turn, amplifies the resonance of activities performed by the constitutional justice system for public authority institutions, civil society and political system in general. In such circumstances, fears of further implementation of written procedure allegedly constituting a threat of *in camera* trials of cases attaining a high degree of socio-political importance appears to be, at least, insubstantial.

Amendments that came into force on the 1 of August 2015 are also aimed at providing the full-scale compliance with the constitutionally established right to judicial protection belonging to individual and collective applicants. This concerns the possibility of lodging complaints in the electronic form by way of filling the special worksheet on the Constitutional Court’s official website or through transmitting an electronic document, signed by electronic signature. In case of presenting an electronic application the documents and other materials attached to it shall also be presented in electronic form; provision of copies of such application as well as that of the documents and other materials attached to it is not required. Such operation of modern technologies should have a very positive effect on widening the access to constitutional justice.

### **Quantitative and qualitative characteristics of complaints**

Complaints by citizens and their associations amount to approximately 99.4% of all the applications lodged with the Constitutional Court.

Thematically, complaints by private applicants cover the whole spectrum of constitutional rights and freedoms, including civil political rights, economic, social and labour rights as well as procedural guarantees of their realisation.

### **Interpretation of the concept of “individual case”**

In a given context an individual case is a case where the court implementing jurisdictional or other procedure resolves an issue touching upon the rights and freedoms of an applicant and also establishes and (or) examines the facts on the basis of provisions of corresponding law. Such term as “courts” is understood as including only courts forming a part of Russian

Federation's judiciary. Mediation bodies, (international) arbitration courts as well as executive authority quasi-judicial bodies (for example, the Chamber of Patent Disputes) are not considered as such. Examination of the case is considered finalised when the court's decision (sentence) becomes final and binding. This fact shall be verified by the applicant by way of presenting a copy of the official document attesting the application of the challenged law within the framework of corresponding individual case being an attachment to his or her complaint.

### **Trends in development of the concept of complaint**

Presently one can notice two tendencies regarding development of the concept of complaint subject to examination in accordance with rules of constitutional proceedings. The first one consists in amplification of possibilities to protect constitutional rights and freedoms. The concept of individual and collective complaints contributes to elicitation of the "new", i.e. not stipulated in the text of the Constitution, rights by the Constitutional Court and their eventual protection. Thus, for example the rights to local self-government was defined as a collective right belonging to territorial associations of citizens subject to realisation on the basis of the Constitution (Judgment № 7-P. of 2 April 2002).

The second one is linked to the optimisation of procedure of admitting complaints for consideration: by establishing requirements aimed at reducing the quantity of unfounded applications and excluding the possibility of converting the Constitutional Court from the extraordinary instance into that of additional appeal, while not hindering realisation of the right to petition.

The key criterion in this relation is the admissibility of complaint. In recent years, the legal provisions establishing admissibility criteria have been subjected to a number of alterations. As mentioned above, at present citizens and their associations are entitled to file a complaint to the Constitutional Court alleging a violation of their rights by a law implemented in the individual case that has been closed. Previously there existed a possibility to challenge not only the court implementation of the law, but also its operation by any other actor, or to appeal against the law subject to implementation. New regulations harmonise the distribution of competence between the constitutional justice system and courts of other jurisdictions, while elaborating the constitutional provisions concerning individual and collective complaints submitted to the Constitutional Court.

In addition, a complaint is considered as inadmissible by the Constitutional Court in case the applicant does not allege any violation of his or her constitutional rights and freedoms, but requests a protection of a public interest defined in accordance with the applicant's own perception; the petitioner applies for review of constitutionality of constitutional provisions; if the complainant asks to check the conformity of provisions of a federal law with those of another federal law; the appellant tries to challenge the unlawful actions of state authorities; the claimant appeals against the choice of legal norm performed by the court of general jurisdiction and against its implementation within the framework of an individual case.

### **The problem of challenging the abolished (invalid) norm**

As a general rule, applications aimed at challenging the abolished or invalid law are dismissed, as far as the annulment of a deficient act by the legislator himself is not less effective for protection of the constitutional rights of citizens than a declaration of unconstitutionality of such act.

However, the Constitutional Court's jurisdiction in its temporal aspect and in accordance with the mere nature of this judicial authority institution extends to all legal provisions regardless of their formal annulment or *de facto* nullification provided their influence on the case law leads to a violation of constitutional rights. Thus the review of abolished or *de facto* nullified laws is possible, if their implementation continues within the framework of legal relations originated during the period of their validity. Extension of constitutional protection to the ultra-active norms contributes to realisation of the constitutional right to judicial protection (Art. 46 of the Constitution) as well as of the right to fair trial, stipulated in the Convention (Art. 6 of the Convention for Protection of Human Rights and Fundamental Freedoms). By issuing a decision the Constitutional Court defines the rights and obligations of parties to the long-lasting legal relations originated from the act that has been abolished (has lost its legal effect) by the time of applying to the Constitutional Court. Moreover, in order to maintain the balance of the constitutional values the Constitutional Court decides on the fate of legal relations of that kind, while assessing constitutionality of the nullified norm. The Court is authorised to put an end to such legal relations, to change or to uphold them.

### **Effects of final decision on a complaint**

What are the effects of issuing the final judgment on a complaints filed by private entities and also on other applications by other actors, lodged in relation to certain individual case, by the Constitutional Court?

The act or the norm declared unconstitutional shall not be implemented from the date of publication of corresponding judgment; the legislator is bound to timely and properly amend the legal regulation in question. Along with that, in order to maintain the balance of constitutionally significant interests, secure the stability of legal relations and prevent the violations of rights and freedoms of the general public, the Constitutional Court occasionally defines the way its judgment is to be executed in the text of corresponding judgment.

Declaration of unconstitutionality of a legal act has a retrospective effect in relation to cases of citizens that have applied to the Constitutional Court, and also as concerns the non-enforced legal practice decisions anterior to corresponding Constitutional Court's judgment. Cases that caused the application to the Constitutional Court shall in any case be reviewed by the competent institutions. Such review shall be performed regardless of expiration of the terms of application to the mentioned institution and also of existence or absence of other grounds for review. Safeguards of the right to such a review has been amplified by the alterations to the Act introduced in December 2016, that have directly provided for the obligatory review of the case in the event certain normative act or any provisions therein would be found as conforming to the Constitution. Such review is to be performed in accordance with the interpretation given by the Constitutional Court (Art. 87, Art. 100).

As concerns decisions of the Constitutional Court defining the constitutional denotation of certain norm, one should note that such decisions put an end to the legal effect of the reviewed norm in its unconstitutional interpretation. Consequently, any interpretation of such norm that differs from this norm's defined constitutional denotation becomes invalidated. Position formulated by the Constitutional Court on the basis of reviewing an individual or collective complaint that concerns constitutionality of practical interpretation of certain normative act or of any provision therein shall be taken into consideration by legal practice institutions from the date of entry into force of the corresponding judgment of the Constitutional Court. In addition, decisions of the Constitutional Court constitute the official grounds to reconsider certain case on the basis of newly discovered circumstances. Non-parties to the constitutional proceedings in relation to whom the normative provisions, which had received a constitutional interpretation within the framework of the Constitutional Court's decision, were applied are entitled to initiate the review of the judgment (in order to seek its alteration

or annulment) based on the normative provisions in question provided the Constitutional Court's interpretation of these normative provisions differs from that formed in practice, such judgment has not become final and binding, it has acquired the legal effect but has not been enforced, or has not been fully enforced.

### **Russian concept within the framework of comparative law perspective**

Modern legislation of the Russian Federation does not contain any reference to "action at law of the people" (*actio popularis*), i.e. to the citizens' right of petition aimed at protecting the interests of general public provided the applicants' constitutional rights have never been violated by the legislative act they challenge. Moreover, current Russian concept of complaint, reviewed within the framework of constitutional proceedings, differs significantly from the so-called "full constitutional complaint" known to the number of European countries (Austria, the Federal Republic of Germany, Spain, Slovakia, the Czech Republic). Citizens are not entitled to initiate constitutional proceedings in order to challenge violations of their rights and freedoms caused by court decisions and other acts of implementing the law. Nevertheless, the elicitation of certain norm's constitutional denotation helps to adjust the legal practice and if necessary contributes to the review of previously issued court decisions.

Along with that, there exists one more peculiarity. The procedure of individual and collective complaints' consideration includes a preliminary stage with the leading role assigned to the Secretariat of the Constitutional Court. Its task consists in assessment of the conformity of the lodged complaint with jurisdictional and admissibility requirements. At the same time an inadmissibility decision taken by the Secretariat can be overruled by the Constitutional Court's decision on the basis of the applicant's petition.

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Perennial experience of examining individual and collective complaints of private entities as well as of applications of other authorised subjects by the Constitutional Court gives rise to a conclusion, that the corresponding kind of norms' control, generally conforming to the European standards of constitutional justice, in the context of actual Russian background contributes not only to enhancing protection of constitutional rights and liberties, but also to better understanding of their essence.