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**ROLE OF THE CONSTITUTIONAL COURTS
IN UPHOLDING AND APPLYING
THE CONSTITUTIONAL PRINCIPLES**

NATIONAL REPORT

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ROLE OF THE CONSTITUTIONAL COURTS IN UPHOLDING AND APPLYING THE CONSTITUTIONAL PRINCIPLES

I. The role of the constitutional court in defining and applying explicit/implicit constitutional principles.

1. *a) Does the constitutional court or equivalent body exercising the power of constitutional review invoke certain constitutional principles in the process of constitutional adjudication?*

b) To what extent does the constitutional court go in this regard?

c) Does the constitution or any other legal act regulate the scope of constitutional decision-making in terms of referring to specific legal sources within the basic law that the constitutional court may apply in its reasoning?

a) Does the constitutional court or equivalent body exercising the power of constitutional review invoke certain constitutional principles in the process of constitutional adjudication?

Articles 118, 125, and 128 (Part 3) of 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” (hereinafter – Law on CC) designate the status of the Constitutional Court of the Russian Federation (hereinafter – Constitutional Court; Court) as the court exercising judicial power by means of constitutional adjudication and designate its constitutional competencies.

The Constitutional Court resolves exceptionally the issues of law and in the course of administering constitutional justice refrains from establishing and examining of the factual circumstances in all cases when it falls within the competence of other courts or any other bodies.

The competencies of the Constitutional Court imply interpretation of provisions of the basic law and administration of the constitutional normative review. These types of activity of the Constitutional Court determine the main substance of the Russian constitutional review.

Depending on the object of the review and on the circumstances of the case being considered, the Constitutional Court shall apply certain constitutional principles. The Constitutional Court can appeal either to a group of interrelated constitutional principles, or to a certain select constitutional principle. Application of the constitutional principles to the subject matter allows the Constitutional Court to

elaborate a legal position and to resolve an existing uncertainty, which is a ground for consideration of a case in accordance with the Law on CC.

Depending on the substance of the issue raised by the applicant before the Constitutional Court (protection of the human dignity, electoral rights of citizens, rights of municipal entities, right to property, social rights, *etc.*) in the course of assessment of constitutionality of legal provisions the Court founds upon certain constitutional principles (*e.g. principles of freedom of economic activity, independence of local self-government, universality of pension protection, etc.*) to a greater or lesser extent.

At the same time, in the course of the development of constitutional adjudication there were elaborated such constitutional principles, which are permanently applied for the assessment of constitutionality of legal norms, as *e.g. the principle of formal certainty of law, maintenance of citizens' confidence in law and actions of the State, stability and citizens' rights security.*

Meanwhile, the activity of the Constitutional Court itself as a judicial body of constitutional review implies permanent and continuous implementation of such basic constitutional principles (both explicitly enshrined in the Constitution of the Russian Federation and in the Law on CC and derived by the Court in the course of constitutional adjudication) in the course of adjudication as *the principle of separation of powers, imposition of an exclusive function of administration of justice on a court, independence of a court, openness of a court trial, adversariality and equality of arms, constitutional restraint, fairness, proportionality, stability security, etc.*¹

b) To what extent does the constitutional court go in this regard?

In the course of consideration of an issue under the constitutional review procedure the Constitutional Court applies constitutional principles to the full extent.

For illustrative purposes the following *decisions* of the Constitutional Court might be mentioned.

¹ See, in particular, item 5 of *the Judgment of 25 June 2015 No. 17-P* in the case concerning evaluation of constitutionality of Part 3 of Article 71 of the Federal Law “On hunting and protection of hunting resources and on introduction of amendments to certain legislative acts of the Russian Federation”; Item 5.3 of *the Judgment of 23 December 2013 No. 29-P* in the case concerning evaluation of constitutionality of Part 2 of Article 5 of the Federal Law “On the minimum wage rate”; Item 4 of *the Judgment of 5 February 1993 No. 2-P* in the case concerning evaluation of constitutionality of the law enforcement practice related to the judicial procedure for resolution of disputes regarding provision of housing accommodations; concerning evaluation of constitutionality of the administrative procedure for eviction of citizens from arbitrarily occupied housing accommodations with a prosecutor’s approval; concerning evaluation of constitutionality of the refusal to initiate a criminal case; Item 3.1 of *the Ruling of 17 July 2014 No. 1567-O* upon a request of a group of deputies of the State Duma for evaluation of constitutionality of the Law of the Russian Federation “On the Amendment to the Constitution of the Russian Federation “On the Supreme Court of the Russian Federation and Public Prosecution Office of the Russian Federation”, *etc.*

1. In the Judgment of 25 February 2016 No. 6-P the Constitutional Court held that:

1) discretion of the federal legislature in regulation of the relationships determining exercising of a right of access to justice and to a fair trial is not absolute and does not exempt from responsibility to act in a lawful manner in the course of concretising the provisions of Articles 17 (Parts 1 and 3), 19 (Parts 1 and 2), 21, 46 (Part 1), 47 (Part 2), 55 (Part 3), and 123 (Part 4) of the Constitution of the Russian Federation, and specifically in relation to a court of jury as a legitimate composition of a court on criminal cases with respect to certain categories of crimes, *i.e.* to act proceeding from the necessity of a substantiated and objectively justified differentiation of procedural norms of judicial protection while providing the retention of balance of constitutional values and *of adherence to the principle of legal certainty*, avoiding disproportional limitation of human and citizen rights and freedoms, and providing unconditional upholding of *equality of everyone before the law and courts and of equality of rights* guaranteed by the Constitution of the Russian Federation;

2) it is *the constitutional principle of equality of rights*, which has universal character, that exerts regulative influence on all spheres of social relationships and that acts as a constitutional criterion for evaluation of legislative regulation of not only the rights and freedoms enshrined directly in the Constitution of the Russian Federation but of the rights acquired by virtue of a law. Observance of the named principle, which guarantees protection from all forms of discrimination in the exercise of rights and freedoms, among other issues implies a prohibition against introduction of those inequalities in rights of persons, who belong to one and the same category, which lack objective and reasonable justification (Judgments of 16 June 2006 No. 7-P, of 5 April 2007 No. 5-P, of 16 July 2007 No. 12-P, of 25 March 2008 No. 6-P, of 26 February 2010 No 4-P, *etc.*).

Thus, the Constitutional Court substantiates the obligation of federal legislature to concretise certain provisions of the Constitution of the Russian Federation in a lawful manner, in accordance with a group of constitutional principles – legal certainty, proportionality and equality before the law and courts and equality of rights, subsequently, from the universal (general) principle of equality it derives the prohibition against introduction of those inequalities in rights of persons, who belong to one and the same category, which lack objective and reasonable justification.

2. In the Judgment of 26 May 2015 No. 11-P the Constitutional Court, proceeding from *the constitutional principles of equality and justice*, which among other issues imply equal treatment of persons being in a similar situation, with respect to the issue under consideration, drew a conclusion that the penitentiary

system employees should be provided with the terms of monthly monetary compensation payment for redress of harm to health in case of an injury or other damage to health sustained in the discharge of their official duties, which eliminate the possibility of further service and entail persistent loss of occupational capacity, comparable to those granted to the police bodies employees.

Thus, the principles of equality and justice became the foundation for elaboration of the named legal position.

3. In the Judgment of 1 July 2015 No. 18-P in the case concerning interpretation of Articles 96 (Part 1) and 99 (Parts 1, 2 and 4) of the Constitution of the Russian Federation the Constitutional Court specified that designation of term of office of the State Duma in Article 96 (Part 1) of the Constitution of the Russian Federation, which is an indispensable element of its constitutional status, while being a part of the check and balances system, the existence of which is determined by *the principle of separation of state power into a legislature, an executive, and a judiciary* (Article 10 of the Constitution of the Russian Federation), serves to ensure independence of the State Duma as one of the highest bodies of state power (Article 80, Part 2, of the Constitution of the Russian Federation). Therefore, election of the State Duma shall be exercised for the constitutionally designated 5 year term envisaged to determine a real periodicity of federal parliament elections, in absence of which the democratic nature of the rule of the people is unthinkable.

Thereby the Constitutional Court interpreted the named constitutional provision by virtue of the constitutional principle of separation of powers, which determines the mechanism of checks and balances that the interpreted constitutional provision is qualified as a part of.

Continuation of this exemplary series can illustrate the multidimensionality and multivariance of application of constitutional principles in practice of the Constitutional Court. However, in all cases the application of constitutional principles remains to be an indispensable foundation of the decisions thereof adopted in the course of consideration of an issue under the constitutional review procedure.

c) Does the constitution or any other legal act regulate the scope of constitutional decision-making in terms of referring to specific legal sources within the basic law that the constitutional court may apply in its reasoning?

It appears that essentially neither the Constitution of the Russian Federation, nor the Law on CC should contain explicit targeted designation of which exact sources of law the Constitutional Court may apply for substantiation of its decision. Taking into account the intended purpose of the Constitutional Court and the essence of

constitutional justice, the Constitution of the Russian Federation allows to outline a rather wide and open-ended list of such sources (in particular, proceeding from Articles 2, 15 (Parts 1 and 4), 17 (Part 1), 46 (Part 3), 55 (Part 1), 126, *etc.*).

Pursuant to Part 1 of Article 120 of the Constitution of the Russian Federation, judges shall be independent and shall be governed solely by the Constitution of the Russian Federation and by federal law. Pursuant to Part 1 of Article 29 of the Law on CC, judges of the Constitutional Court in the exercise of their powers shall be independent and shall be governed solely by the Constitution of the Russian Federation and by the named Federal Constitutional Law.

Meanwhile, in furtherance of the constitutional guarantees of the judges' independence, of their subordination solely to the Constitution of the Russian Federation and to federal law, Parts 3 and 4 of Article 29 of the Law on CC provide that decisions and other acts of the Constitutional Court shall express the corresponding to the Constitution of the Russian Federation legal position of the judges, which shall be free of any political preferences. Judges of the Constitutional Court adopt decisions in the circumstances eliminating the possibility of external influence on the freedom of expression of their will. Thereby the margin of appreciation of judges of the Constitutional Court, in particular, with respect to their selecting and engaging of certain sources of law for evaluation of the contested legislative provisions (for comprehension of the essence of the constitutional provisions when interpreting the Constitution of the Russian Federation, *etc.*) is being provided.

Inasmuch as constitutional principles in the structure and substance of the Constitution of the Russian Federation are expressed explicitly, their application in the course of consideration of an issue under the Russian constitutional review procedure forms an inherent part of the activity of the Constitutional Court.

Thus, the structure of the Constitution of the Russian Federation consisting of the Preamble, nine Chapters, the Final and Transitional Provisions contains Chapter 1 "Fundamentals of the Constitutional Order". Pursuant to Article 16 of the Constitution of the Russian Federation, the provisions of Chapter 1 thereof constitute the fundamentals of the constitutional order of the Russian Federation, and no other provision of the given Constitution shall contradict them. Hence, the Constitution of the Russian Federation prescribes to conform to, first of all, the principles designating the fundamentals of the constitutional order.

In practice of the Constitutional Court there is a well-established comprehension of that circumstance that the fundamentals of the constitutional order of the Russian Federation consist of the constitutional principles contained in the provisions of Chapter 1 "Fundamentals of the Constitutional Order" and *certain provisions* of Chapter 2 "Human and Citizen Rights and Freedoms" (*Articles 17–19 and 55*) of

the Constitution of the Russian Federation (Judgments of 13 March 2008 No. 5-P, of 2 December 2013 No. 26-P, *etc.*). Inasmuch as in the Constitution of the Russian Federation and in practice of the Constitutional Court a number of constitutional principles are considered as the fundamentals of the constitutional order having special significance as against other provisions of the Constitution of the Russian Federation (no other provision of the given Constitution can contradict them), the application of the named principles in practice of the Constitutional Court forms a compulsory and indispensable element of the activity thereof.

Furthermore, the Constitution of the Russian Federation explicitly designates other sources of law observance of which is compulsory, in particular, when adopting and substantiating judicial decisions (Part 2 of Article 15).

Pursuant to Part 2 of Article 4 of the Constitution of the Russian Federation, the Constitution of the Russian Federation and federal laws shall have supremacy throughout the entire territory of the Russian Federation. Meanwhile, the Constitution of the Russian Federation shall have supreme legal effect, direct effect and shall be applicable throughout the entire territory of the Russian Federation, while laws and other legal acts adopted in the Russian Federation cannot contradict it (Part 1 of Article 15).

Pursuant to Part 4 of Article 15 of the Constitution of the Russian Federation, universally recognised principles and norms of international law and international treaties of the Russian Federation shall constitute an integral part of its legal system; if an international treaty of the Russian Federation establishes rules other than those established by law, the rules of the international treaty shall apply.

2. *a) What constitutional principles are considered to be organic in your jurisdiction?*

b) Are there any explicit provisions in the constitution setting out fundamental principles?

c) Is there any case-law in respect of basic principles? How often does the constitutional court make reference to those principles?

a) What constitutional principles are considered to be organic in your jurisdiction?

Inasmuch as the notion of organic constitutional principles is not in use as such with respect to the Russian constitutional law, considering the context of the given issue, it appears reasonable to regard the named term as a synonym of fundamental/foundational constitutional principles relegated to the fundamentals of the constitutional order. The named category of principles comprises all those constitutional principles enshrined in the provisions of Chapter 1 “Fundamentals of the Constitutional Order”. Pursuant to Article 135 of the Constitution of the

Russian Federation, the named provisions alongside with the provisions of Chapters 2 and 9 cannot be revised. If a proposal to revise the named provisions is supported by three fifths of the total number of members of the Council of the Federation and deputies of the State Duma, then in accordance with federal constitutional law, a Constitutional Assembly shall be convened which shall either confirm the invariability of the Constitution of the Russian Federation, or draft a new Constitution of the Russian Federation and adopt it by two thirds of the total number of its members, or shall refer the respective draft to a national vote. Taking into consideration the substance of the provisions of Chapter 1 “Fundamentals of the Constitutional Order” of the Constitution of the Russian Federation and inadmissibility of revision thereof otherwise than under the procedure of drafting and adoption of a new Constitution, the named provisions should be recognised as an organic part of the Constitution of the Russian Federation, the revision of which is equipollent to revision of the Constitution entirely. Therefore, the constitutional principles contained therein can as well be recognised as organic principles of the Constitution of the Russian Federation.

Furthermore, as previously noted, the Constitutional Court relegated to the constitutional principles comprising the fundamentals of the constitutional order (organic principles) also certain principles contained in the provisions of Chapter 2 “Human and Citizen Rights and Freedoms” of the Constitution of the Russian Federation – Articles 17–19 and 55 (Judgments of 13 March 2008 No. 5-P, of 2 December 2013 No. 26-P, *etc.*).

Further on there will be listed certain foundational (basic) principles enshrined in the Constitution of the Russian Federation both in explicit (primarily) and implicit forms.

b) Are there any explicit provisions in the constitution setting out fundamental principles?

As previously noted, such explicit provisions are the provisions of Chapter 1 “Fundamentals of the Constitutional Order” and certain provisions of Chapter 2 “Human and Citizen Rights and Freedoms” (Articles 17–19 and 55) of the Constitution of the Russian Federation.

The named provisions contain the following list of constitutional principles:

1) constitutional principles characterising the state –democratic state, federal state, republican form of government, law-governed state, social state, secular state, sovereignty, integrity and inviolability of the territory of the Russian Federation, state integrity, equality of rights of constituent entities of the Russian Federation (Part 1 of Article 1, Parts 1 and 3 of Article 4, Parts 1, 3 and 4 of Article 5, Article 7, Part 1 of Article 14);

2) constitutional principles characterising human and citizen legal status in the state – supreme valuableness of human rights and freedoms, universal and equal citizenship of the Russian Federation, recognition and guaranteeing of human and citizen rights and freedoms in accordance with universally recognised principles and norms of international law and the Constitution of the Russian Federation, inalienability of fundamental human rights and freedoms and inherence thereof to everyone from birth, inadmissibility of infringing rights and freedoms of other persons in exercise of human and citizen rights and freedoms, direct effect of human and citizen rights and freedoms, determination of the meaning, substance and implementation of laws, the activity of legislative and executive power, of local self-government by human and citizen rights and freedoms, ensuring of human and citizen rights and freedoms by administration of justice, equality of everyone before the law and courts, equality of rights and freedoms of men and women and equality of opportunities to exercise them, permissibility of restriction of human and citizen rights and freedoms by federal law only to the extent which is necessary for constitutional purposes (Article 2, Part 1 of Article 6, Articles 17–19, Part 3 of Article 55);

3) constitutional principles characterising the multinational people of the Russian Federation – the bearer of the sovereignty and the only source of power is the multinational people, equality and self-determination of peoples (Part 1 of Article 3, Part 3 of Article 5);

4) constitutional principles characterising organisation of the state power – separation of state power into a legislature, an executive, and a judiciary, independence of bodies of state power, unity of the system of state power, distribution of competencies and powers between bodies of state power of the Russian Federation and bodies of state power of constituent entities of the Russian Federation, recognition and guaranteeing of local self-government, independence of local self-government within the limits of its powers, noninclusion of local self-government bodies into the system of bodies of state power (Part 3 of Article 5, Article 10, Article 12);

5) constitutional principles characterising economic system – integrity of economic space, free movement of goods, services and financial resources, support of competition, freedom of economic activity, recognition and protection of private, state, municipal and other forms of property, utilisation and protection of land and other natural resources as of the foundation of life and activity of peoples living on the respective territories (Article 8, Part 1 of Article 9);

6) constitutional principles characterising political system – ideological diversity, political diversity, multiplicity of parties, equality of public associations

before the law, separation of religious associations from the state and equality thereof before the law (Articles 13 and 14);

7) constitutional principles characterising legal system – supremacy of the Constitution of the Russian Federation and federal laws, supreme legal effect, direct effect and applicability throughout the entire territory of the Russian Federation, observance of the Constitution of the Russian Federation and laws by bodies of state power, bodies of local self-government, officials, citizens and their associations, constitutional and treaty-based distribution of competencies and powers between bodies of state power of the Russian Federation and bodies of state power of constituent entities of the Russian Federation, universally recognised principles and norms of international law and international treaties of the Russian Federation –integral part of its legal system (if an international treaty of the Russian Federation establishes rules other than those established by law, the rules of the international treaty shall apply), inadmissibility of contradiction of other provisions of the Constitution of the Russian Federation to the fundamentals of the constitutional order (Part 3 of Article 11, Article 15 and Part 2 of Article 16).

c) Is there any case-law in respect of basic principles? How often does the constitutional court make reference to those principles?

As previously noted, in the course of consideration of an issue under the constitutional review procedure the Constitutional Court applies constitutional principles to the full extent. Consequently, there is comprehensive case-law on application of basic principles, with the Constitutional Court systematically referring thereto. It is hard if not impossible to find a substantial decision of the Court which would not contain any explicit or implicit reference to the foundational principles enshrined in the Constitution of the Russian Federation.

For instance, *the constitutional principle of equality* is considered by the Constitutional Court as a constitutional criterion for evaluation of legislative regulation of any rights and freedoms, while applicability of the named principle to all fundamental rights and freedoms does not eliminate the possibility of its divergent manifestations: with respect to personal rights it implies primarily formal equality, though with respect to economic and social rights formal equality might devolve into material inequality. Thus, proceeding from the constitutional freedom of contract, the legislature shall not be limited to formal recognition of legal equality of parties and shall provide economically weaker and dependant party with certain advantages for the prevention of unfair competition in the sphere of banking activity and, in accordance with Articles 19 and 34 of the Constitution of the Russian Federation, to virtually guarantee the observance of the equality principle in the course of entrepreneurial and other economic activity not prohibited by law (*Judgment of 23 February 1999 No. 4-P* in the case concerning

evaluation of constitutionality of the provision of Part 2 of Article 29 of the Federal Law “On Banks and Banking Activity”, *Ruling of 2 February 2006 No. 17-O* on refusal to admit for consideration the request of the Legislative Assembly of Vologodskaya oblast for evaluation of constitutionality of certain provisions of Articles 40, 98, 99 and 102 of the Federal Law “Charter of Railway Transport of the Russian Federation”).

The legal regulation exercised by the legislature – *by virtue of the constitutional principles of a law-governed state, the rule of law and legal equality* – shall meet the requirements of certainty, clarity and self-consistency, while the mechanism of its functioning shall be comprehensible to the respective legal relationships parties through the substance of a certain normative provision or through a system of normative provisions being in an evident interrelation, inasmuch as constitutional equality can be ensured only upon condition of a unified comprehension and interpretation of a legal norm by all executors of law (Judgments of the Constitutional Court of the Russian Federation of *24 March 2015 No. 5-P* in the case concerning evaluation of constitutionality of Article 19 of the Federal Law “On Bringing the Housing Code of the Russian Federation into Effect”, of *23 December 2013 No. 29-P* in the case concerning evaluation of Paragraph 1 of Item 1 of Article 1158 of the Civil Code of the Russian Federation, *etc.*).

The constitutional principles of integrity of economic space, free movement of goods, services and financial resources, support of competition and freedom of economic activity are the foundation of legal regulation in such sphere of civil turnover as real estate turnover (*Judgment of 4 June 2015 No. 13-P* in the case concerning evaluation of constitutionality of the provisions of Article 31.1 of the Federal Law “On State Registration of Rights to Real Estate and Transactions Therewith”).

3. a) *Are there any implicit principles that are considered to be an integral part of the constitution?*

b) *If yes, what is the rationale behind their existence?*

c) *How they have been formed over time? Do they originate from certain legal sources (e.g. domestic constitutional law or the constitutional principles emanating from international or European law; newly-adopted principles or ones re-introduced from the former constitutions)?*

d) *Has academic scholars or other societal groups contributed in developing constitutionally-implied principles?*

a) *Are there any implicit principles that are considered to be an integral part of the constitution?*

In addition to the provisions explicitly allocating constitutional principles, there are provisions in the Constitution of the Russian Federation, the legal substance of

which in a systemic unity with other constitutional provisions reveals the constitutional principles which are not directly included in the text of the Constitution of the Russian Federation.

These revealed constitutional principles include the principles of humanity, justice, respect of human dignity, ensuring mutual trust between individuals and the public authority, the obligatory effect of the election results, the unity of the constitutional status of an individual within the whole territory of the Russian Federation, independence of the parliamentary mandate, integrity and unity of the system of state powers, coordinated operation of representative and direct democracy institutions, autonomy and equality of municipalities, financial independence of local self-government; the rule of law, legality, legal certainty; balance of private and public interests, balance of rights and obligations, balance between the rights and legitimate interests of different persons, equality of rights and freedoms of citizens before the law, stability and warranty of citizens' rights, inadmissibility of abuse of rights, inadmissibility of distortion of the very essence of law; proportionality of the use of state coercion, stability and predictability of law, inadmissibility of arbitral refusal of the legislature's public law commitments, effective restitution of rights, proportionality of legal responsibility to the values protected by laws and to an imminent social danger of an offense, individualisation and differentiation of punishment, impartiality of the court, obligatory legal effect of judicial decisions; principles of socially justifiable differentiation of non-reduction of the previously achieved level of social protection; freedom of contract, stability of contract, civil law equality of all proprietors, prohibition of excessive burden on private property; the principles of balance, reality of federal budget, equal tax burden under the income tax, economic neutrality taxes.

The list of implicit constitutional principles is not closed, since other principles can be discovered in the course of further legal development based on the Constitution of the Russian Federation. At the same time the listed principles do not exhaust all the implicit constitutional principles revealed while applying constitutional provisions. Nevertheless, this enumeration includes the most significant (universal, general, fundamental) ones, defined as such by the Constitutional Court. Wherein explicitly stated constitutional principles – and, as a consequence, the direction of legal development of the state and society – are preserved due to the ontological principles and values which the constitutional text is based on and which from this perspective can be considered as implicit fundamental principles (in an unmanifested form).

b) What is the rationale behind their existence?

These principles are natural and objective characteristics of the modern Russian legal system determined by the Constitution of the Russian Federation. Accordingly, irrespective of the fact whether these principles are expressly stated

in the text of the Constitution of the Russian Federation in such a precise wording or comprise a semantic component of constitutional provisions, they do not lose their significance as the constitutional principles.

Moreover, the emerging country's legal regulation receives various internal and external impulses of economic, political, legal, socio-cultural, and another nature, presuming the process of generation of bilateral or multilateral international agreements and the mutual influence of countries and supranational institutions.

An in-depth attention of the Constitutional Court to the issue of harmonisation of rights and legitimate interests of all parties of relations, legal regulation of which, from the point of view of the applicants, violates their constitutional rights and freedoms, involves – taking into account the presumption of the legislature's integrity – revealing and verbalisation of a number of fundamental principles, implicitly enshrined in the Constitution.

c) How they have been formed over time?

Implicit constitutional principles originally contained in the Constitution of the Russian Federation constitute the core of the legal positions of the Constitutional Court, development, addition, and deepening thereof take place during the whole period of the Court's activity. In parallel with the enrichment of legal positions (including the results of their application by virtue of a higher degree of constitutional generalisation² in the analysis of legal acts of various branches of law), a more complete revealing of the constitutional principles increases, including the verbalisation thereof (towards implicit principles), their gradual purification, and crystallisation thereof. These principles, being along with the explicit constitutional principles are the most important characteristics of Russian legal system, provide continuous regulatory impact on social relations. However, in some cases, when there is a doubt or uncertainty in respect of the provisions of the Constitution of the Russian Federation, these principles, as a concentrated expression of the meaning of constitutional provisions, can be revealed (not formed but revealed, as they are already contained in the norms of the Constitution of the Russian Federation) and utilised directly in the capacity of constitutional principles for the settlement of a raised issue.

² *Judgment of 27 January 1993 No. 1-P*, in the case concerning evaluation of constitutionality of the law enforcement practice of limitation of time paid for enforced absence in case of an illegitimate dismissal, established on the basis of labour legislation and judgments of the Plenums of the USSR Supreme Court, the RSFSR Supreme Court, the Supreme Court of the Russian Federation regulating these issues.

d) Has academic scholars or other societal groups contributed in developing constitutionally-implied principles?

While preparing the draft text of the Constitution of the Russian Federation at the Constitutional Commission and then at the Constitutional Assembly (the bodies created exclusively for that purpose) different social groups and well-known Russian legal scientists were well represented, which had a significant, socially and scientifically defining substantiated effect on the designation of constitutional principles, in particular, on the allocation of the special Chapters “Fundamentals of the Constitutional Order” and “Human and Citizen Rights and Freedoms” in the structure of the Constitution of the Russian Federation.

Further on, it became possible to form a large theoretical potential – the ideological source of constitutional principles as a result of rapidly occurring processes and scientific controversies in modern Russian legal science. Moreover, taking into account scientific discoveries and general legal values, based on the ideas of democracy and respect for dignity of an individual, scientific research plays the same role as it does in the related jurisprudence.

The key importance in the development of constitutional principles belongs to petitions of the citizens and their associations, groups of deputies of the State Duma, the representative bodies of subjects of the Russian Federation and local self-government to the Constitutional Court.

4. a) What role has the constitutional court played in defining the constitutional principles?

b) How basic principles have been identified by the constitutional court over time?

c) What method of interpretation (grammatical, textual, logical, historical, systemic, teleological etc.) or the combination thereof is applied by the constitutional court in defining and applying those principles?

d) How much importance falls upon travaux préparatoires of the constitution, or upon the preamble of the basic law in identifying and forming the constitutional principles?

e) Do universally recognised legal principles gain relevance in this process?

a) What role has the constitutional court played in defining the constitutional principles?

Taking into account the previously mentioned powers of the Constitutional Court, revealing and verbalisation of implicit constitutional principles in the Russian Federation refer to the permanent characteristics of its activities. Application of these principles as well as the use of explicit principles is carried out by the Constitutional Court. The Constitutional Court, being guided by a group (the

system) of constitutional principles, can combine both explicit and implicit principles, depending on the issue under consideration.

The following examples of the Constitutional Court decisions prove the previously stated conclusions.

1. In the Judgment of 4 April 1996 No.9-P the Constitutional Court stated that:

while adjusting the taxation, constituent entities of the Russian Federation must to the full extent be guided by the requirements of Article 18 of the Constitution of the Russian Federation establishing that human and citizen rights and freedoms shall determine the meaning, substance and application of laws (*an explicit constitutional principle*); the laws of constituent entities of the Russian Federation, establishing taxes and fees, must take into account such constitutional principles as the principle of equality (Article 19, Part 1) (*an explicit constitutional principle*) and the principle of proportionality of constitutional restrictions of rights and freedoms to the constitutionally significant objectives (Article 55, Part 3) (*an implicit constitutional principle*);

in order to ensure the regulation of taxation in accordance with the Constitution of the Russian Federation the principle of equality (*an explicit constitutional principle*) requires consideration of the *de facto* ability to pay taxes on the basis of legal principles of fairness and proportionality (*implicit constitutional principles*); the principle of equality in the social state in relation to the obligation to pay legally established taxes and fees (Article 6 (Part 2) and Article 57 of the Constitution of the Russian Federation) requires the achievement of equality through the fair redistribution of income and differentiation of taxes and fees (*a constitutional rule originating from the application of explicit and implicit constitutional principles relating to the matter under consideration*);

taxation always implies certain restrictions in respect of the right to property enshrined in Article 35 of the Constitution of the Russian Federation. In this regard, the laws of the Russian Federation on taxes and fees are protected by the provisions of Article 55 (Part 3) of the Constitution of the Russian Federation according to which human and citizen rights and freedoms may be limited by federal law only to the extent meeting certain constitutionally significant purposes, *i.e.* to be proportionate to them (*an implicit constitutional principle*). Taxation, paralysing realisation of citizens' constitutional rights, must be recognised disproportionate. Therefore, excessive taxes and fees raise the problem of their differentiation in relation to the principles of equality (*an explicit constitutional principle*) and justice (*an implicit constitutional principle*) which is of particular importance.

In the given case the Constitutional Court concluded that the contested legislative provision is not in conformity with the Constitution of the Russian Federation (Articles 7, 19 (Part 1), 55 (Part 3) 57) to the extent that it violates the constitutional principles of equality and proportionality, constitutionally significant aims of restriction of the fundamental human and citizen rights and freedoms, but also distorts the meaning of the general principles of taxation in the Russian Federation.

Thus, unconstitutionality of the contested provision was established because it contradicted explicit (the principle of equality) and implicit (the principle of proportionality) constitutional principles.

2. In the Judgment of 1 December 1997 No. 18-P the Constitutional Court held that introduction of additional requirements for the extraordinary provision of housing to citizens affected by technogenic disasters, such as the Chernobyl Disaster, by the legislature is a violation of the constitutional principle of justice (*an implicit constitutional principle*) as well as the equality of everyone before the law, enshrined in Article 19 (Part 1) of the Constitution of the Russian Federation (*an explicit constitutional principle*).

3. In the Judgment of 5 December 2012 No. 30-P the Constitutional Court, having reviewed constitutionality of the provisions of Part 5 of Article 16 of the Federal Law “On Freedom of Conscience and Religious Associations” and Part 5 of Article 19 of the Law of the Republic of Tatarstan “On Freedom of Conscience and Religious Associations”. The Court stated that extrapolation of the legal regime of rallies, demonstrations and marches in respect of any prayer and religious meeting held outside specially designated areas, in circumstances where neither the Federal Law “On Meetings, Rallies, Demonstrations, Processions and Picketing”, nor the Federal Law “On Freedom of Conscience and Religious Associations” do not make any distinction between those prayer and religious meetings which may require the public authorities to take measures to ensure public order and safety of both the members of the religious events, and other citizens, and those events, conduct of which does not involve such a necessity (which allows them to provide a less stringent legal regime as compared to the set of rules for holding rallies, demonstrations and marches) – is contrary to *the principles of equality, fairness and proportionality* emanating from the Constitution of the Russian Federation.

Thus, the revealed and substantiated principle of legal certainty is utilised in the practice of the Constitutional Court directly, i.e. without the need to justify its existence since such a justification has been given earlier.

The Constitutional Court also revealed the constitutional principles of *respect of human dignity, humanism and the rule of law* in the Constitution of the Russian

Federation (Judgment of 19 March 2003 No. 3-P, Judgment of 14 July 2011 No. 16-P, Judgment of 26 November 2012 No. 28-P, and Judgment of 19 November 2013 No. 24-P).

The principle of respect of dignity of a person was allocated by the Constitutional Court directly in the substance of Part 1 of Article 21 of the Constitution of the Russian Federation, while its conjunction with other constitutional principles makes it possible to reveal and to use the “new” implicit constitutional principles. Thus, in the Judgment of 16 December 2014 No. 33-P the Constitutional Court stated that from Article 1 (Part 1) of the Constitution of the Russian Federation, which enshrines the principle of the rule of law, in its systemic unity with Articles 3 (Part 3) and 32 (Part 2) and Article 21 (Part 1), which establish as a basis for the recognition and exercise of the rights and freedoms of citizens in all spheres the principle of respect and protection of dignity of an individual, follows that the basis for the implementation of the electoral rights should lie in *a constitutional requirement of ensuring mutual trust in relations between an individual and public authorities*, which in relation to this area involves primarily the maintenance by the state of citizens’ confidence that the elections as one of the highest forms of direct expression of the people’s will reach meet their objective, and the election’s results are recognised and respected by both the state and all of the participants thereof. Earlier, this requirement has been determined by the Constitutional Court *as the constitutional principle of mutual trust in relations between an individual and the public authorities* (Judgment of 22 April 2013 No. 8-P).

b) How basic principles have been identified by the constitutional court over time?

The Constitutional Court itself applies the explicit constitutional principles or reveals and then applies the implicit constitutional principles. Subject to its competence, it did not and does not establish principles, it just reveals and applies the principles contained in the Constitution of the Russian Federation, by virtue of a combination of various methods of interpretation both when determining them, and when applying. Such activity takes place in the form of decisions of the Constitutional Court adopted under the constitutional judicial procedure in respect of the raised issues.

c) What method of interpretation (grammatical, textual, logical, historical, systemic, teleological etc.) or the combination thereof is applied by the constitutional court in defining and applying those principles?

The main methods of the Constitutional Court’s interpretation in determination and application of constitutional principles are grammatical, logic, systematic, teleological and sociological methods. Depending on an issue in question the Constitutional Court may employ other methods of interpretation. As a general

rule, the methodology of the Constitutional Court decision-making involves a combination of these methods of interpretation. However, in some cases one or another method can be crucial.

Hence, the grammatical interpretation was applied for the clarification of the substance of Part 1 of Article 21 of the Constitution of the Russian Federation, according to which the individual dignity is protected by the state and nothing derogate the latter. Consequently a direct conclusion about presence of implicit constitutional principle of respect of a person's dignity in the Russian Constitution is logically implicated from this position (Constitutional Court Judgment of 16 December 2014 No. 33-P).

There are examples of a targeted application of these methods of interpretation for determination and application of implicit constitutional principles.

Hence, from Article 1 (Part 1) of the Constitution of the Russian Federation, which enshrines the principle of the rule of law (*a grammatical interpretation*), in the systemic unity with Articles 3 (Part 3) and 32 (Part 2), and Article 21 (Part 1) (*systematic interpretation*) follows that the electoral rights implementation lies in a constitutional requirement (a principle) of ensuring mutual trust in relations between an individual and the public authorities (*a logical interpretation*) which in respect of this area involves primarily the maintenance of the citizens' confidence in the state and confidence that elections as one of the highest forms of direct expression of the people's will reaches its aim (*a teleological interpretation*) and the results thereof are recognised and respected by both the state and all the elections' participants (*a sociological interpretation*) (Judgment of 16 December 2014 No. 33-P).

d) How much importance falls upon travaux préparatoires of the constitution, or upon the preamble of the basic law in identifying and forming the constitutional principles?

Taking into account a relative recentness of the Constitution of the Russian Federation (adopted on 12 December 1993), the structural and substantial peculiarities thereof characterised by the presence of provisions enshrining a wide range of constitutional principles, the Constitutional Court does not appeal to the Constitutional Assembly's materials for revealing and formation of constitutional principles. Nevertheless, there is a practice of application of the Constitutional Assembly's materials while considering issues the substance of which determines such necessity (*e.g.* Judgment of 19 April 2016 No. 12-P).

Unlike the abovementioned documents, the Preamble to the Constitution of the Russian Federation is essential for the establishment and creation of constitutional principles and has, therefore, the characteristic of normativity.

Firstly, the Preamble itself contains some constitutional principles which have been discovered by the Constitutional Court.

1. As the Constitutional Court of the Russian Federation has repeatedly stated, *the principles of justice* in criminal-law area are provided by retroactive effect of the criminal law provisions, eliminating criminality of an act or mitigating punishment (the Preamble to the Constitution of the Russian Federation, Article 6 of the Criminal Code of the Russian Federation) (Judgments of 20 April 2006 No. 4-P, of 2 July 2013 No. 16-P, of 19 November 2013 No. 24-P, Decisions of the Constitutional Court of 20 October 2011 No. 1393-O-O, of 22 March 2012 No. 594-O-O, of 17 July 2012 No. 1461-O etc.). Therethrough the Constitutional Court designates the regulatory framework of the constitutional principle of justice – the Preamble to the Constitution of the Russian Federation.

2. In the Judgment of 20 December 2010 No. 21-P the Constitutional Court observed that restitution of violated rights implements *the principle of maintenance of citizens' confidence in law and actions of the State* implied by the Constitution of the Russian Federation (the *Preamble*, Article 1, Part 1; Article 2; Article 18; Article 21, Part 1).

3. As the Constitutional Court has derived from the Preamble and Articles 1 (Part 1), 2, 15 (Parts 1 and 4), 17, 18, 19, 46, and 118 of the Constitution of the Russian Federation, the latter enshrines the principle of legal justice and a consequential principle of justice of judicial acts being a prerequisite for judicial protection of human rights and freedoms (Judgment of 5 February 2007 No. 2-P).

Secondly, the Preamble contains constitutional objectives, making it possible to reveal the constitutional principles in their unity with other constitutional provisions.

1. Articles 9, 36 (Part 2), 42 and 58 of the Constitution of the Russian Federation in the normative unity with *the objective of ensuring the welfare of current and future generations and responsibility before these generations set forth in the Preamble*, express one of the basic principles of legal regulation of relations in the field of environmental protection and environmental security – the principle of priority of the public interest (Judgments of 14 May 2009 No. 8-P, of 5 March 2013 No. 5-P, of 2 June 2015 No. 12-P, etc.).

2. In the Judgment of 21 December 2005 No. 13-P the Constitutional Court observed that Articles 1 (Part 1), 3 (Parts 1–3), 4 (Parts 1 and 2), 5 (Part 3) and 15 (Part 1) establishing the constitutional legal status of the Russian Federation as a sovereign state based on the principles of democracy, the rule of law, federalism, predetermine the need for an appropriate institutional and legal mechanisms to

achieve the fundamental objectives proclaimed by the multinational people of the Russian Federation when adopting the Constitution of the Russian Federation, such as the assertion of rights and freedoms, inviolability of the democratic foundations of Russia, the revival of the latter's sovereign statehood and preservation of historically established unity of the state (the Preamble to the Constitution of the Russian Federation).

3. The constitutional principle of a democratic federal law-governed state with a republican form of government, democracy and free elections as the highest direct expression of the people's will, the unity of the system of state power in conjunction with the *objective* of inviolability of the democratic foundations of Russia directly expressed in the *Preamble to the Constitution* of the Russian Federation predetermines the right and the responsibility of the legislature to provide for such an organisation of the state power, including the order and conditions of creation of its bodies, which would guarantee protection from distortion of the democratic nature of the constitutional order of the Russian Federation (Judgment of the Constitutional Court of 9 July 2002 No. 12-P).

Thirdly, by the way of consolidation of the constitutional values, the Preamble facilitates revealing the substance and correct application of explicit and implicit constitutional principles enshrined in other provisions of the Constitution of the Russian Federation.

1. In the Judgment of 12 March 2015 No. 4-P the Constitutional Court held that in accordance with the Constitution of the Russian Federation the policy of Russia as a legal and social state – presuming responsibility before the present and future generations, the desire to ensure the welfare and prosperity of the country (*provisions of the Preamble*) – is aimed at creating conditions for a dignified life and free development of a human being (the Preamble; Article 1, Part 1; Article 7, Part 1).

2. The sovereignty of the Russian Federation as a democratic federal law-governed state, which extends to its whole territory, is established by the Constitution of the Russian Federation as one of the fundamentals of the constitutional order (Article 4, Part 1). The bearer of the sovereignty and the only source of power in the Russian Federation, according to the Constitution of the Russian Federation, is its multinational people (Article 3, Part 1), which, *preserving the historically established unity of the state, proceeding from the universally recognised principles of equality and self-determination of peoples and reviving the sovereign statehood of Russia, adopted the Constitution of the Russian Federation* (the Preamble) (Judgments of 7 June 2000 No. 10-P and of 9 July 2012 No. 17-P).

e) Do universally recognised legal principles gain relevance in this process?

Considering the circumstance that inclusion of universally recognised norms of international law into the legal system of the Russian Federation constitutes an explicit constitutional principle, while definition and application of constitutional principles shall be exercised in their systemic unity, the named norms have significant importance for filling with substance and enhancing of constitutional principles.

In its practice the Constitutional Court reconciles constitutional provisions with universally recognised principles and norms of international law. International-law argumentation is being utilised for the interpretation of the constitutional provisions enshrining constitutional principles, as well as for the further substantiation of legal positions of the Constitutional Court. Thus, in *the Judgment of 23 December 2013 No. 29-P* in the case concerning evaluation of constitutionality of Paragraph 1 of Item 1 of Article 1158 of the Civil Code of the Russian Federation the Constitutional Court stated, in particular, that the Constitution of the Russian Federation proclaims the human, the rights and freedoms thereof the highest value (Article 2) and – proceeding from that human and citizen rights and freedoms have direct effect, determine the essence, substance and application of laws and are ensured by administration of justice – obliges the state to recognize, observe and protect these rights and freedoms basing on the principle of equality, guarantee them in accordance with universally recognised principles and norms of international law and in compliance with the Constitution of the Russian Federation (Article 17, Part 1; Article 18; Article 19, Parts 1 and 2), allowing for their restriction exceptionally by federal law and exceptionally to the extent which is necessary for the protection of the fundamentals of the constitutional order, morality, health, rights and legitimate interests of other persons, ensuring of defence of the country and security of the state (Article 55, Part 3).

5. *a) What is a legal substance/character of the constitutional principles?*
 b) Are they considered to be the genesis of the existing constitutional framework?
 c) What emphasis is placed upon the basic/fundamental principles by the constitutional court in relation to a particular constitutional right? Are the basic principles interpreted separately from the rights enumerated in the constitution or does the constitutional court construe the basic/fundamental principles in connection with a specific constitutional right as a complementary means of the latter's interpretation?

a) *What is a legal substance/character of the constitutional principles?*

Constitutional principles comprise a normative generalisation of constitutional provisions outlined in the form of ideas which envelop the whole legal system as well as social relations governed by law or subject to such regulation.

The substance/character of single constitutional principles and groups thereof is significantly predetermined by the object of their regulatory impact (corresponding classification was mentioned above). They provide the clearer delimitation of the effect a certain constitutional right has, of its correlation with other constitutional rights and respectively of the objectives the federal legislature has while exercising regulation of certain relations.

b) *Are they considered to be the genesis of the existing constitutional framework?*

As previously noted, in the structure and substance of the Constitution of the Russian Federation the large portion of constitutional principles are defined as the fundamentals of the constitutional order, *i.e.* the genesis of the existing constitutional framework.

c) *What emphasis is placed upon the basic/fundamental principles by the constitutional court in relation to a particular constitutional right? Are the basic principles interpreted separately from the rights enumerated in the constitution or does the constitutional court construe the basic/fundamental principles in connection with a specific constitutional right as a complementary means of the latter's interpretation?*

Generally speaking, the power to reveal and interpret the constitutional principles is not vested on the Constitutional Court; however the normative review of constitutionality of legislative provisions the Constitutional Court shall exercise against the background of constitutional rights and freedoms. Therefore, revealing, verbalisation and application of constitutional principles for the Constitutional Court forms, first of all, the means of interpretation of corresponding constitutional right.

As to the correlation between constitutional principles and constitutional rights in the course of interpretation of constitutional provisions, the constitutional rights are not just additionally discerned through the constitutional principles but the latter are also interpreted in the light of the constitutional rights. Moreover, in particular cases certain implicit constitutional principles forming the fundamentals of the constitutional order have been discerned from the constitutional provisions guaranteeing individual constitutional rights (for example, *the principle of respect of person's dignity from the right to dignity*).

Thus, in the Judgment of 26 November 2002 No. 16-P the Constitutional Court specified that the direct manifestation of the constitutional principles of respect of person's dignity, humanism, justice, and lawfulness is the right of every person convicted of a crime to request a mitigation of the punishment (Part 3 of Article 50 of the Constitution of the Russian Federation).

In the Judgment of 14 July 2011 No. 16-P the Constitutional Court observed that direct manifestation of the constitutional principles of respect of person's dignity, humanism, justice, lawfulness, innocence presumption, the right to remedy, inter alia the judicial one, aimed to protect the rights and liberties of the suspect (the accused) is the possibility of rehabilitation, that is the restoration of dignity and reputation.

The Constitutional Court has also repeatedly stated that in regulation of social relations the federal legislature is bound by the constitutional principle of proportionality and the requirements of adequacy and appropriateness of the legal means used deriving from it. In the cases when constitutional norms allow the legislature to set restrictions of the rights secured by them, he cannot establish such a regulation that would infringe the very essence of a certain right and would result in the loss of its real substance. Even aiming at prevention of the abuse of right he is to use not excessive but only the necessary measures connected with the constitutionally recognised purposes of such restrictions.

6. a) *What are the basic principles that are applied most by the constitutional court?*

b) *Please describe a single (or more) constitutional principle that has been largely influenced by constitutional adjudication in your jurisdiction. What contribution has the constitutional court made in forming and developing of such principle(s)? Please, provide examples from the jurisprudence of the constitutional court.*

a) ***What are the basic principles that are applied most by the constitutional court?***

Among the principles that are applied most by the Constitutional Court one should mention the principle of equality (more than 1500 decisions), principle of proportionality (more than 900 decisions). Moreover, combined application of the named principles is a pretty frequent case. The practise of the Constitutional Court is also characterised by the widespread use of the principle of legal certainty (more than 500 decisions).

The most frequently used principles forming certain groups of the latter are the following:

within the group of the constitutional principles setting the legal status of individual and that of the citizen – the principle of priority of human rights and liberties (more than 250 decisions) and the principle of humanism (more than 200 decisions);

within the group of the constitutional principles establishing the structure of state authority – the principle of separation of powers (approximately 200 decisions) and that of delimitation of authority and competence of the state bodies of the Russian Federation and the ones of its constituent entities (approximately 150 decisions);

within the group of the constitutional principles characterising the Russian state – the principle of the rule of law state (approximately 150 decisions) and the principle of a democratic state (more than 100 decisions);

within the group of the constitutional principles defining the economic system –the principle of equal protection of all forms of ownership (more than 130 decisions) and the principle of integrity of economic space (more than 70 decisions) etc.

b) Please describe a single (or more) constitutional principle that has been largely influenced by constitutional adjudication in your jurisdiction. What contribution has the constitutional court made in forming and developing of such principle(s)? Please, provide examples from the jurisprudence of the constitutional court.

As previously stated, the practise of the Constitutional Court of the Russian Federation is characterised by the application (depending on the essence of the case) of all explicit and revealed implicit constitutional principles.

Noteworthy is the fact that, of the constitutional principles that are most frequently used, the principle of equality is the only of the explicit ones, the other three principles (justice, proportionality and legal certainty) are implicit and were revealed by the Constitutional Court by means of interpretation of the constitutional provisions. Accordingly, despite the fact that the Constitution of the Russian Federation, unlike the constitutions of many other countries, explicitly establishes a wide range of integral principles (principles that form the fundamentals of the constitutional order), the Constitutional Court made a significant contribution to the revealing and formulation of the implicit constitutional principles which have universal generally legal significance and are frequently applied by the Constitutional Court in its decisions. In this connection, it is expedient to demonstrate how the decision of the Constitutional Court influenced the essence and implementation of the explicit constitutional principle. The frequently used principle of separation of powers serves as an example here.

The latter was exposed in the most detailed way and to the fullest extent in the Judgment of the Constitutional Court of 11 December 1998 No. 28-P.

The question was raised before the Constitutional Court, regarding the official interpretation of Part 4 of Article 111 of the Constitution of the Russian Federation, according to which, following the three-time rejection of the candidates to the post of the Chairman of the Government of the Russian Federation by the State Duma, the President of the Russian Federation appoints the Chairman of the Government of the Russian Federation, dissolves the State Duma and calls the new elections.

In regard to the given case, the State Duma asked to clarify the following issue: whether the President of the Russian Federation is entitled to propose the candidate to the post of the Chairman of the Government of the Russian Federation which has been rejected by the State Duma, and what are the legal consequences of the three-time rejection of the same candidate to the mentioned post by the State Duma.

The Constitutional Court stated that, according to the literal meaning of Part 4 of Article 111 of the Constitution of the Russian Federation viewed in conjunction with the other provisions of the named Article, the phrase “three-time rejection of the candidates proposed to the post of the Chairman of the Government of the Russian Federation” may mean three-time rejection of both the candidate to the post, and three-time rejection of different candidates proposed to occupy the position (*grammatical interpretation*); hence it appears that the text of the Article 111 of the Constitution of the Russian Federation as such does not exclude any of the abovementioned two options (*application of the rules of logic*).

However, the Constitutional Court noted that the constitutional-law meaning of the provisions of Part 4 of the Article 111 of the Constitution of the Russian Federation may and should be deduced taking into account the aims pursued by the constitutional legislature and implied in the provisions in question (*teleological interpretation*).

As the Constitutional Court pointed out, the legal logic of the Article 111 of the Constitution of the Russian Federation, considered in conjunction with Articles 83 (Item “a”), 84 (Item “b”) and 103 (Item “a” of Part 1) thereof, consists in preventing, in the conditions of *separation of state authority* in the Russian Federation into the legislative, executive and judicial powers (Article 10 of the Constitution of the Russian Federation), of a confrontation between them, which is inconsistent with the fact that the only source from which they stem, and the bearer of sovereignty embodied by them, is the multinational population of the Russian Federation (the Preamble, Article 3, Parts 1 and 2). The said principal provisions underlying the structure of authority of a democratic rule of law state, also

invokes the necessity to obtain consent of the State Duma for appointment of the candidate to the post of the Chairman of the Government of the Russian Federation, proposed by the President of the Russian Federation. By defining conditions and procedure for appointment of the Chairman of the Government of the Russian Federation, the Constitution of the Russian Federation envisages the methods to overcome possible disagreements between branches of state power, in order to avoid delaying the formation and the consequential hindrance of activities of the Government of the Russian Federation, being the one of the institutional elements of the constitutional order of the Russian Federation (Article 11, Part 1) (*systematic interpretation*).

Having thus defined the meaning of the constitutional principle of separation of powers, the Constitutional Court proceeded to the implementation thereof in the governmental system. It noted that establishing the functions and powers of the federal governmental authorities, the Constitution of the Russian Federation proceeds from the nature of their constitutional relationships. Thus, the President of the Russian Federation, according to the Constitution of the Russian Federation, is a Head of State (Article 80, Part 1) and, because of his place within the system of separation of powers, the President of the Russian Federation acting as a Head of State determines, in accordance with the Constitution of the Russian Federation and the federal laws, the main objectives of internal and foreign policy of the state (Article 80, Part 3), the implementation of which is vested in the Government of the Russian Federation (Article 114, Part 1). These are the foundations of the powers of the President of the Russian Federation concerning formation of the Government of the Russian Federation, defining the directions of, and control over its activities (Article 83, Items “a”, “b”, “c”, “d”; 111; 112; 115, Part 3; 117 of the Constitution of the Russian Federation), as well as the constitutional liability of the President of the Russian Federation for the acts of the Government of the Russian Federation (*systemic interpretation*). This also includes the role of the President of the Russian Federation in forming the personal composition of the Government of the Russian Federation, which also applies to selection of candidates and appointment to the post of the Chairman of the Government of the Russian Federation (*logical interpretation*).

Further on, the Constitutional Court stated that the practice of applying of Article 111 of the Constitution of the Russian Federation reveals a variety of approaches to implementation of powers vested therein, including approval of the proposed candidate to the post of the Chairman of the Government of the Russian Federation upon the first presentation, the ternary presentation of the same candidate, and also application of the conciliation procedures after two-time rejection of a candidate. The Constitutional Court also admits that the possibility of forming a constitutional practice in the future is left open, and that such practice will be based on any kind of interaction between the President and the State Duma, outlined in Part 4 of Article 111 of the Constitution of the Russian Federation, and corresponding to the

objectives of stable functioning of the constitutional order, taking into account the historical context (*sociological interpretation*).

On the basis of the given arguments, the Constitutional Court reached the final conclusion in the case under consideration, that an indispensable outcome of tree-time rejection of candidate to the post of the Chairman of the Government of the Russian Federation, proposed by the President of the Russian Federation, by the State Duma – regardless of the possible ways to propose a candidate that has been applied – is the appointment of a Chairman of the Government of the Russian Federation, dissolution of the State Duma and calling the new elections by the President of the Russian Federation. Such constitutional law way to resolve the problem of differences between the President of the Russian Federation and the State Duma using the mechanism of free elections corresponds to the fundamentals of the constitutional order of the Russian Federation being a democratic and a rule of law state.

The named decision allowed to provide certainty in the system of separation of powers, and to guide the constitutional processes associated with the settlement of the issue of formation of the Government of the Russian Federation by the supreme bodies of state power in a constructive course. In the future, as demonstrated by the constitutional practice, such position has contributed to a smoother interaction between the President of the Russian Federation and the State Duma, as well as to stability and steadiness of activity of the Government of the Russian Federation.

II. Constitutional principles as higher norms? Is it possible to determine a hierarchy within the Constitution? Unamendable (eternal) provisions in constitutions and judicial review of constitutional amendments.

1. a) *Do the constitutional principles enjoy certain degree of superiority in relation to other provisions in the basic law?*

b) *What is the prevailing legal opinion among both academic scholars and practitioners in your jurisdiction about attaching higher value to certain constitutional principles over other provisions of basic law?*

a) *Do the constitutional principles enjoy certain degree of superiority in relation to other provisions in the basic law?*

As previously noted, a considerable portion of constitutional principles is contained in the provisions of Chapters 1 and 2 of the Constitution of the Russian Federation, their revision being equivalent to adoption of a new Constitution. Thus, in the Constitution of the Russian Federation these provisions are especially highlighted in relation to its other parts. It should also be noted that according to the Constitution of the Russian Federation none of its other provisions may conflict

with the fundamentals of the constitutional order of the Russian Federation (Part 2 Article 16). Accordingly, there are procedural-law differences between the constitutional provisions guaranteeing the constitutional principles and other constitutional provisions. Coupled with the substantive characteristics of the constitutional principles and the outlined practise of the Constitutional Court the mentioned distinctions make it possible to state that within the framework of Russian jurisprudence the constitutional principles enjoy the superiority in relation to other provisions of the basic law. However, this superiority is exclusively connected with the legal protection of these “eternal” principles and with the interpretation of the Constitution of the Russian Federation. Within the framework of the latter process the constitutional principles have the guiding and crucial importance for the exposure of the meaning of the constitutional provisions as applied to the subject matter under consideration. At the same time this superiority does not entail the supremacy in terms of legal effect.

b) What is the prevailing legal opinion among both academic scholars and practitioners in your jurisdiction about attaching higher value to certain constitutional principles over other provisions of basic law?

The higher value of the constitutional principles in relation to other provisions of the Constitution of the Russian Federation in accordance with the concept described above is widely accepted by both academic scholars and legal practitioners.

2. What approach has the constitutional court taken in terms of determining a hierarchy within the constitution? Is it possible to conclude from the jurisprudence of the constitutional court that it has given principal status to some constitutional principles over the rest of the basic law?

As it was repeatedly noted, the Constitutional Court, bearing in mind the peculiarities of the structure and substance of the Constitution of the Russian Federation that explicitly and implicitly guarantees the constitutional principles attaches the principal status to the latter in relation to the rest of the basic law. One should underline however that the Constitutional Court does not vest such a status in the constitutional principles but admits it because these principles' status is directly regulated by the Constitution of the Russian Federation. At the same time such supremacy does not entail the existence of any legal hierarchy among the provisions of the Constitution of the Russian Federation and the possibility to perform a test of conformity of certain basic law provisions with the constitutional principles. Such hierarchy only has material significance and plays the crucial role within the process of interpretation of provisions of the Constitution of the Russian Federation.

3. a) *How is the constitution amended in your jurisdiction? What is the procedure for the constitutional amendment set out in the basic law?*

b) *How the constitution was established originally and does it explicitly provide for unamendable (eternal) provisions?*

c) *Is there any difference between the initial manner of constitutional adoption and the existing procedure of the amendment to the basic law?*

a) *How is the constitution amended in your jurisdiction? What is the procedure for the constitutional amendment set out in the basic law?*

According to Article 136 of the Constitution of the Russian Federation amendments can be introduced into Chapters 3–8 of the Constitution of the Russian Federation. This is related to the fact that, according to Article 135 (Part 1) of the Constitution of the Russian Federation, the provisions of Chapters 1, 2 and 9 of the Constitution of the Russian Federation may not be revised.

Amendments to the provisions of Chapters 3–8 of the Constitution of the Russian Federation shall be adopted in accordance with the procedure provided for the adoption of federal constitutional laws and shall come into effect after they are approved by the bodies of legislative power of not less than two thirds of the constituent entities of the Russian Federation. The procedure for the adoption of a federal constitutional law is established in Article 108 (Part 2) of the Constitution of the Russian Federation, which envisages obligatoriness of the approval of such a law by a majority comprising not less than three fourths of the total number of the members of the Council of the Federation and not less than two thirds of the total number of the deputies of the State Duma. An adopted federal constitutional law shall be signed by the President of the Russian Federation and promulgated within fourteen days.

However, the procedure for the adoption of amendments to Chapters 3–8 of the Constitution of the Russian Federation significantly differs from the procedure for the adoption of a federal constitutional law:

1) the list of subjects entitled to propose amendments to the Constitution of the Russian Federation, envisaged by Article 134 of the Constitution of the Russian Federation³, does not coincide with the list of subjects of legislative initiative envisaged by Article 104 of the Constitution of the Russian Federation⁴;

³The President of the Russian Federation, the Council of the Federation, the State Duma, the Government of the Russian Federation, legislative (representative) bodies of constituent entities of the Russian Federation, and also a group of not less than one fifth of members of the Council of the Federation or deputies of the State Duma are entitled to propose amendments.

⁴The right to legislative initiative belongs to the President of the Russian Federation, Federation Council, Federation Council members, State Duma deputies, Government of the Russian Federation, legislative (representative) bodies of constituent entities of the Russian Federation; as well as to the Constitutional Court of the Russian Federation and the Supreme Court of the Russian Federation on issues within their competencies.

2) pursuant to Article 136 of the Constitution of the Russian Federation the amendments come into effect after they are approved by the bodies of legislative power of not less than two thirds of the subjects of the Russian Federation.

Having recognised the inadmissibility of adoption of amendments to the Constitution of the Russian Federation in the form of a federal law or a federal constitutional law, the Constitutional Court reached a conclusion that the provisions of Article 136 of the Constitution of the Russian Federation can be implemented only in a form of a special legal act on a constitutional amendment with a special status different from those of a federal law or a federal constitutional law. The legislature, in accordance with and within the framework of the Constitution of the Russian Federation, is entitled to regulate the procedure for submitting amendments for consideration by legislative bodies of constituent entities of the Russian Federation and verification of compliance with the required procedures of approval of amendments, and other matters relating to the procedure for adoption of amendments. The issue of manner in which one or another amendment shall be reflected within the text of the Constitution of the Russian Federation shall also be defined by the legislature proceeding from the nature and substance of the amendments (Judgment of the Constitutional Court of 31 October 1995 No. 12-P).

The Federal Law of 4 March 1998 No. 33-FZ “On the Procedure of Adoption and Entry into Effect of Amendments to the Constitution of the Russian Federation”, which in accordance with Articles 108, 134, 136 of the Constitution of the Russian Federation establishes the procedure and conditions of introduction, adoption, approval and entry into effect of amendments to Chapters 3–8 of the Constitution of the Russian Federation, designates the form of a normative legal act on amendment to the Constitution of the Russian Federation – a law of the Russian Federation on the amendment to the Constitution of the Russian Federation.

b) How is the constitution amended in your jurisdiction? What is the procedure for the constitutional amendment set out in the basic law?

The Constitution of the Russian Federation was adopted by a national vote (referendum) on 12 December 1993.

According to Article 135 (Part 1) of the Constitution of the Russian Federation, the provisions of Chapters 1, 2 and 9 of the Constitution of the Russian Federation cannot be revised by the Federal Assembly (the parliament of the Russian Federation).

c) Is there any difference between the initial manner of constitutional adoption and the existing procedure of the amendment to the basic law?

The Constitution of the Russian Federation was adopted by a referendum, while amendments to the basic law shall be adopted under a special constitutional procedure and with the decisive participation of representative bodies of state power of various levels. Furthermore, the Constitution of the Russian Federation does not provide for the adoption of amendments (Chapters 3–8) by a national vote, i.e. under the procedure in accordance with which the basic law was initially adopted.

4. Should constitutional amendment procedure be subjected to judicial scrutiny or should it be left entirely up to the political actors? What is the prevailing legal opinion in this regard among academic scholars and other societal groups in your jurisdiction?

For a long time amendments to the Constitution of the Russian Federation were not adopted, while the introduced initiatives did not receive adequate support of the legislature, which allowed to form on the doctrinal level a prevailing view of the extreme difficulty, and even practical impossibility of adoption of amendments to the Constitution of the Russian Federation due to a very complicated procedure for the adoption thereof. Therefore, the attention of researchers was focused on studying the mechanisms of substantial, evolutionary development of constitutional provisions.

The amendments to the Constitution of the Russian Federation adopted over the last few years and the attempts to contest them at the Constitutional Court caused a certain interest of scientists and practitioners to this issue. However, inasmuch as the scientific process of discussion of this issue emerged relatively recently, it would be premature to assert which opinion on this issue is predominant.

5. Does the constitution in your jurisdiction provide for constitutional overview of the constitutional amendment? If yes, what legal subjects may apply to the constitutional court and challenge the constitutionality of the amendment to the basic law? What is the legally-prescribed procedure of adjudication in this regard?

The Constitution of the Russian Federation contains no provisions providing for the possibility of constitutional review of amendments to the Constitution of the Russian Federation, likewise the subjects entitled to contest constitutionality of an amendment, their powers and the judicial procedure for consideration of such petitions are not designated. Accordingly, the Law on CC does not provide for the procedure of judicial examination of constitutionality of amendments to the Constitution of the Russian Federation. By the Ruling of 16 July 2009 No. 922-O-O

the Constitutional Court refused to admit for consideration a petition of the applicant who demanded to repeal the Law of the Russian Federation on the amendment to the Constitution of the Russian Federation of 30 December 2008 No. 6-FKZ “On Altering the Term of Office of the President of the Russian Federation and the State Duma” and the amendments to the Constitution of the Russian Federation introduced thereby as being inconsistent with Article 3 (Part 3) of the Constitution of the Russian Federation. The Constitutional Court stated that there are no grounds for admitting the given petition for consideration, forasmuch as it does not meet the criteria of admissibility of petitions to the Constitutional Court of the Russian Federation enshrined in Articles 3, 96 and 97 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, and also forasmuch as the review of the contested provisions in terms of the substance of the norms, in fact amounting to the review of provisions of the Constitution of the Russian Federation, falls beyond the competence of the Constitutional Court.

6. a) *Is the constitutional court authorised to check constitutionality of the amendment to the basic law on substantive basis or is it only confined to review on procedural grounds?*

b) *In the absence of explicit constitutional power, has the constitutional court ever assessed or interpreted constitutional amendment? What has been the rationale behind the constitutional court’s reasoning? Has there been a precedent when the constitutional court had elaborated on its authority to exercise the power of judicial review of constitutional amendments either on substantive or procedural grounds? Please, provide examples from the jurisprudence of the constitutional court.*

a) *Is the constitutional court authorised to check constitutionality of the amendment to the basic law on substantive basis or is it only confined to review on procedural grounds?*

The Constitutional Court is not empowered with the competence to evaluate the constitutionality of an amendment introduced into the Constitution of the Russian Federation.

b) *In the absence of explicit constitutional power, has the constitutional court ever assessed or interpreted constitutional amendment? What has been the rationale behind the constitutional court’s reasoning? Has there been a precedent when the constitutional court had elaborated on its authority to exercise the power of judicial review of constitutional amendments either on substantive or procedural grounds? Please, provide examples from the jurisprudence of the constitutional court.*

The Constitutional Court, in its basic decision reflecting its approach and the legal positions on the subject of the raised issue— the Ruling of 17 July 2014 No. 1567-

O, – stated as follows.

A special mechanism of amending the Constitution of the Russian Federation enshrined in Chapter 9 “Constitutional Amendments and Review of the Constitution” (Articles 134–137), on the one hand, is determined by the firmness of the provisions of the Constitution of the Russian Federation forming the fundamentals of the constitutional order and characterising relations of an individual, society and the state, and by the requirements of ensuring stability of the Constitution of the Russian Federation and its protection against any arbitrary alterations (Chapters 1, 2 and 9), and, on the other hand, – allows, within the limits admitted by the Constitution of the Russian Federation itself, to adjust certain provisions of its Chapters 3–8 by virtue of adoption of a law of the Russian Federation on the amendment to the Constitution of the Russian Federation – a special legal act endowed with a special status (Judgment of 31 October 1995 No. 12-P).

The review of the amendments to the Constitution of the Russian Federation introduced by virtue of such a legal act in terms of substance of the norms, in fact amounting to the review of provisions of the very Constitution of the Russian Federation, does not fall within the competence of the Constitutional Court *per se* (Ruling of the Constitutional Court of the Russian Federation of 16 July 2009 No. 922-O-O). Furthermore, a law of the Russian Federation on the amendment to the Constitution of the Russian Federation as such, in the part referring to introducing of revised edition of certain provisions of the Constitution of the Russian Federation, inclusion of new provisions into the text thereof or repealing of any provisions therefrom, should be considered as having lost its detached legal value from the moment of its entry into effect, i.e. from the moment when the relevant provisions of the Constitution of the Russian Federation become effective as amended by the given law of the Russian Federation on the amendment to the Constitution of the Russian Federation.

As regards the evaluation of constitutionality of the procedure of adoption of a law of the Russian Federation on the amendment to the Constitution of the Russian Federation (constitutionality from the procedural point of view), recognition of such a law as not corresponding to the Constitution of the Russian Federation in terms of the procedure of adoption after its entry into effect can entail loss of effect of the amended provisions of the Constitution of the Russian Federation, and therefore such a review can be exercised only prior to its entry into effect, i.e. under a preliminary normative review procedure, which the Constitutional Court is not empowered to.

7) a) *Is there any tendency in your jurisdiction towards enhancing constitutional authority in respect of constitutional court's power to check amendments to the basic law?*

b) *Do academic scholars or other societal groups advocate for such development?*

c) *How the judicial review is observed in this regard?*

d) *Would the expansion or recognition of constitutional court's authority encourage the realisation of constitutional ends or threaten its viability?*

e) *Please, elaborate on existing discussion in your jurisdiction.*

a) *Is there any tendency in your jurisdiction towards enhancing constitutional authority in respect of constitutional court's power to check amendments to the basic law?*

Over the last few years, the competence of the Constitutional Court has been explicitly expanded considerably. Following the Federal Constitutional Law of 28 June 2004 No. 5-FKZ (as amended on 06.04.2015) "On Referendum of the Russian Federation" the Federal Constitutional Law of 4 June 2014 No. 9-FKZ "On Amending the Federal Constitutional Law "On the Constitutional Court of the Russian Federation" the Constitutional Court was empowered to review the consistency with the Constitution of the Russian Federation of an issue submitted to a referendum of the Russian Federation. 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" provided for that the Constitutional Court, upon requests of a federal executive authority empowered with the competence in the sphere of ensuring activity on representation of the interests of the Russian Federation in the course of consideration by an interstate body on the protection of human rights and freedoms of complaints lodged against the Russian Federation under an international treaty of the Russian Federation, resolves the issue of enforceability of a decision of the interstate body on the protection of human rights and freedoms.

Therefore, it can be affirmed that in Russian jurisprudence there has been observed a tendency in the direction of strengthening of constitutional-judicial power.

b) *Do academic scholars or other societal groups advocate for such development?*

In the Russian science there has been elaborated a position, which receives support of a considerable number of scientists, concerning the feasibility of extension of the competence of the Constitutional Court, in particular, with regard to evaluation of constitutionality of amendments to the basic law. The given position receives its social support from other groups of the society as well, which becomes apparent from a large number of petitions to the Constitutional Court where the applicants –

citizens and associations thereof raise issues which imply extension of the powers of the Constitutional Court. In particular, the petition seeking review of constitutionality of laws on amendments to the Constitution of the Russian Federation was lodged by a group of deputies of the State Duma representing an oppositional association of deputies (faction) of the Communist Party of the Russian Federation.

c) How the judicial review is observed in this regard?

In the Russian jurisdiction, judicial review of constitutionality is exercised under the constitutional judicial procedure designated by the Constitution of the Russian Federation and the Law on CC. In conformity thereto, the Constitutional Court recommended the constitutional legislature “to introduce both into the Constitution of the Russian Federation and the Federal Constitutional Law “On the Constitutional Court of the Russian Federation” amendments concerning the possibility of review by the Constitutional Court of the Russian Federation of a law of the Russian Federation on the amendment to the Constitution of the Russian Federation in terms of the conformity thereof to the provisions of Chapters 1, 2 and 9 of the Constitution of the Russian Federation prior to its entry into effect, i.e. before the moment when the amendments introduced thereby into the Constitution of the Russian Federation become an integral part thereof” (Judgments of 16 June 1998 No. 19-P, of 11 April 2000 No. 6-P, of 21 March 2007 No. 3-P, Ruling of 17 July 2014 No. 1567-O).

d) Would the expansion or recognition of constitutional court’s authority encourage the realisation of constitutional ends or threaten its viability?

Considering the established traditions of the Constitutional Court and eternally balanced approach in decision making, the extension of its competences will undoubtedly contribute to the further achievement of the constitutional objectives.

e) Please, elaborate on existing discussion in your jurisdiction.

The discussion on this issue comprises a wide range of positions, including the substantiation of the obligatoriness for the Constitutional Court to educe and exercise implicit powers, in particular, with regard to the implementation of a full constitutional complaint and protection of subjective constitutional rights, review of constitutional amendments and other constitutional provisions for the conformity to the fundamentals of the constitutional order.

With regard to the named issues, the Constitutional Court endorses a balanced position reflected in decisions thereof, which is allegedly shared by a considerable number of participants of the given discussion.

