



Synthèse / Summary / Kurzfassung / резюме

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

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

Anglais / English / Englisch / английский

CONSTITUTIONAL COURT OF THE RUSSIAN FEDERATION

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

NATIONAL REPORT

to the XVIIth Congress
of the Conference of European Constitutional Courts

SUMMARY

Batumi, 2017

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?

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 in the course of assessment of constitutionality of legal provisions the Court finds upon certain constitutional principles to a greater or lesser extent.

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.

Under these circumstances we can observe 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.).

Moreover, 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.

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”. Taking into consideration the substance 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, 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.

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

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.

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

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.

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?

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, *etc.*

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.

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.

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 generalisation 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.

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 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 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.

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 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.

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.

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.

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.

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. 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*).

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).

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.

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. 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. *E.g.*, the frequently used principle of separation of powers which 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.

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?*

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?*

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.

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.

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 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 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.

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 decision reflecting the approach and the legal positions on the raised issues – 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.

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”.

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.