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Constitutionalism in dynamics: the history of the modern Constitutional Court of the Russian Federation through the prism of its key decisions

Chronicle of 30 years of work in 30 main legal opinions

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Link to website: https://ilpp.ru/en/RCC-30-years-30-desicions/

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Instead of a preface

More than a year ago, at the Institute for Law and Public Policy, we discussed how and with what we can "celebrate" the approaching anniversary of the Constitutional Court — October 30, 2021 marks exactly 30 years from the date of election of its first composition of 13 judges. It was definitely impossible to miss such a date, because three decades is just the milestone that allows you to look back and draw the first conclusions. For us, this task was especially important.

However, it is difficult to come up with something new when constitutional law is the core of your activity, and the values of constitutionalism are the permanent vector of daily work. We published practical manuals, compiled instructions on how to file a complaint with the Constitutional Court, and most recently received from the printing house a fundamental collective monograph on the history of the Constitutional Court.

This time we wanted to make something easy, accessible and understandable to everyone (and even those who are far from jurisprudence) — material that, both in individual chapters and in general, will show the importance, need and value of such a body as the Constitutional Court, how it has changed and what it has brought to the life of ordinary Russians. And it is hardly possible to find a more revealing format than an illustration through simple cases — after all, nothing characterizes a phenomenon as much as a presentation in dynamics, through individual events that had tangible consequences at one time.

"We need to create a list of the most important decisions of the Constitutional Court over the years of its work," we thought.

From the very moment we decided on the topic, the most difficult, as it turned out later, work began — to select those very 30 decisions that could show all the variety and breadth of the jurisprudence of the Constitutional Court, and at the same time demonstrate how the Court changed from year to year.

So what was the main difficulty? It is precisely in the question of where to agree on which of the thousands of decisions of the Constitutional Court had the greatest impact on law enforcement and lawmaking. Those which formed the attitude to the law.

We do not pretend to assert that the list that came out as a result is objective. Sometimes you can also notice a share of interest in it — we could not help but include in it those cases, decisions on which were made with the direct participation of the Institute and which we sincerely consider to be breakthrough. But what can we say for sure — we collected it based on the opinions of completely different lawyers — from different industries, different degrees of publicity, different generations, different schools of thought. What our authors eventually described is, in a good sense, a "hodgepodge" brewed by those whose opinion we fully trust.

Each of the 30 cases consists of three sections — a description of the plot, the essence of the decision of the Constitutional Court and its consequences. We tried to present our list of cases as objectively as possible, but at the same time simply complex things. The authors of this project are not lawyers, but professional journalists whose job it is to gather opinions and present facts. All solutions are ordered chronologically. This seems to be the only way to rank our list without giving priority to any of the decisions.

We do not offer conclusions, we do not want to operate with the categories "good" or "bad" and we do not draw up a conclusion for the reader. Everyone will draw their own conclusions.

Acknowledgments

*The Institute would like to thank **Olga Kryazhkova**, a specialist in constitutional law, for her help in creating this project. She, like many other experts of various legal fields, helped us compile a list of those decisions, each of which had an impact on law enforcement practice in its own way*.

Thanks to ***Pavel Blokhin***, who reviewed this text, making comments and suggestions to the original version, and also adding topics for future digests.

And immeasurable gratitude to the main critic ***Tamara Georgievna Morshchakova*** — it is to her that we owe not only corrections and comments, but also hour-long conversations about the history and context of some decisions, as well as the content of everything that the reader will find in this report.

Solutions from the 90s: from political will to the problems of an ordinary person

The case of the presidential decree, or the first hearing of the modern Constitutional Court

- **Decision:** Judgment of the Constitutional Court No. 1-P-U of January 14, 1992
- **Applicants:** group of people's deputies
- **Contested act:** Decree of the President of the RSFSR of December 19, 1991 No. 289 "On the formation of the Ministry of Security and Internal Affairs of the RSFSR"
- **Result:** the contested act **is contrary** to the Constitution

Plot

On December 19, 1991, by decree of President Boris Yeltsin, by merging two departments — the Ministry of Internal Affairs and the Federal Security Agency — the Ministry of Security and Internal Affairs of the RSFSR (MBVD) was formed. The head of the new ministry was immediately appointed.

"Nezavisimaya Gazeta" reported that this decree caused a sharply negative reaction in the Russian parliament and accusations against Boris Yeltsin of trying to "establish an authoritarian regime in the republic." This decision was opposed by four main committees of the Supreme Council: on legislation, on law and order, on human rights and on security.

A group of deputies of the Supreme Council of the RSFSR sent a petition to the Constitutional Court of the RSFSR (CC) — they demanded that the presidential decree on the formation of the MBVD be recognized as inconsistent with the Constitution of the RSFSR. As the "Izvestia" newspaper wrote, this was the "first public hearing" in the newly formed Constitutional Court. On 14 January 1992, "after 8 hours of deliberation and more than 2 hours of deliberation behind closed doors", the judges ruled in favor of the applicants.

The essence of the decision

The Constitutional Court noted that, according to the Constitution of the RSFSR, the Councils of People's Deputies, the Congress of People's Deputies of the RSFSR, and the Supreme Soviet of the RSFSR are vested with the right to form ministries. It is also up to the legislature to determine the structure of the Council of Ministers.

The president of the RSFSR also had the right to independently decide on issues of reorganization of the executive authorities, but these powers were given only for the period of radical economic reform. And, in any case, the president was obliged to submit a draft decree to the Presidium of the Supreme Soviet of the RSFSR.

"*The Supreme Soviet cannot be excluded from resolving these issues, and the President of the RSFSR, being the head of the executive branch, has no right to limit the constitutional powers of the Supreme Soviet of the RSFSR as a body of legislative power*," the Constitutional Court's judgment says.

Moreover, the Constitutional Court stressed that according to the law, combining the functions of the departments of internal affairs and state security is allowed only when a state of emergency is introduced and only in the form of an operational headquarters. Moreover, such a decision is also made exclusively on behalf of the Supreme Soviet of the RSFSR.

The Constitutional Court also pointed out that the presidential decree on the creation of a united ministry does not correspond to the concept of judicial reform approved by the Supreme Council, which provided for the separation of operational-search functions and the investigation, that is, the organizational separation of the investigative apparatus from the structures of the prosecutor's office, the Ministry of Internal Affairs and the Federal Security Agency (KGB).

The Constitutional Court concludes that Boris Yeltsin, by issuing a decree on the creation of a new ministry, exceeded his authority. According to the court decision, the Decree of the President of the RSFSR of December 19, 1991 No. 289 "On the formation of the Ministry of Security and Internal Affairs of the RSFSR" was recognized as inconsistent with the Constitution of the RSFSR in terms of the separation of legislative, executive and judicial powers established in the Russian Federation, as well as the delineation of competence between the highest bodies of state power and administration of the RSFSR.

Since the entry into force of this decision of the Constitutional Court, the decree itself and all normative acts based on it have lost their legal force and are considered invalid.

Dissenting opinion

Judge **Ernest Ametistov** considered that the presidential decree on the formation of the MBVD was adopted to ensure the stability of the system of state authorities during the period of radical economic reform. "*This conclusion was confirmed during the meeting of the Constitutional Court of the RSFSR both by the representative of the President of the RSFSR, and by a number of expert opinions, testimonies and documents presented*," the text of the dissenting opinion says.

At the same time, the judge recognized that the decree contradicted a number of laws of the RSFSR. For example, the creation of a "powerful super-ministry", according to Ametistov, contradicts the decision of the Supreme Soviet of the RSFSR, which provides for the disintegration of the Ministry of Internal Affairs and the transfer of many of its powers to other bodies.

Why has this decision been important?

After the court recognized the presidential decree on the creation of a unified Ministry of Security and Internal Affairs as unconstitutional, the Kremlin was forced to abandon this idea. **Sergey Shakhrai**, who then served as Deputy Prime Minister of the Russian Federation and oversaw the Federal Security Agency and the Ministry of Internal Affairs of the RSFSR, said: "The decision of the Constitutional Court is not legal, but political. But the government must obey."

The head of the policy department at "Vedomosti", **Dmitry Kamyshev**, called this decision of the Constitutional Court one of those that "influenced the course of Russian history." "*Separation of the functions of state security and protection of public order, experts believe, is one of the elements of the system of checks and balances, without which the stable functioning of the rule of law is impossible*," "Izvestiya" wrote in the news about the recognition of the decree as invalid.

The case on the constitutionality of the dissolution of the structures of the CPSU

- **Decision:** Judgment of the Constitutional Court No. 9-P of November 30, 1992
- **Applicants:** group of people's deputies
- **Contested acts:** Decrees of the President of the RSFSR No. 79 "On the suspension of the activities of the Communist Party of the RSFSR", No. 90 "On the property of the CPSU and the Communist Party of the RSFSR" and No. 169 "On the activities of the CPSU and the Communist Party of the RSFSR"
- **Result:** a number of provisions of the contested acts **do not comply** with the Constitution, but the presidential decrees are **lawful**

Plot

A group of people's deputies of the RSFSR appealed to the Constitutional Court because of three decrees issued by the first president of the Russian Federation Boris Yeltsin and deciding the fate of the Communist Party. According to the parliamentarians, the documents on the suspension of the activities of the

Communist Party, the property and activities of the Communist Parties of the RSFSR and the CPSU were adopted in an unconstitutional way.

The deputies believed that when promulgating them, Boris Yeltsin violated one of the basic democratic principles of the separation of powers, intruding into the sphere of authority of the legislative and judicial branches. In their appeal to the Constitutional Court, they noted that the suspension of the activities of a public association is possible only in a state of emergency, which did not exist at the time the relevant decree was issued, and therefore the President of the Russian Federation exceeded his powers.

Boris Yeltsin's decrees were issued against the background of the August actions of the State Committee for the State of Emergency (GKChP), which put forward demands on General Secretary of the Central Committee of the CPSU Mikhail Gorbachev to introduce a state of emergency in the country or transfer power to Vice President Gennady Yanaev. The Central Committee of the CPSU and part of the local party committees supported the activities of the State Emergency Committee, which violated one of the first decrees of Boris Yeltsin as president — "On the termination of the activities of the organizational structures of political parties and mass social movements in state bodies, institutions and organizations of the RSFSR". The document forbade the CPSU and its local branches to interfere in the activities of state institutions. The decree on the property of the party imposed a ban on transactions with what belonged to the party and its subdivisions.

The last document, which the deputies disputed, was published already in November and gave a more detailed assessment of the activities of the CPSU by Boris Yeltsin as a whole: "*The events of August 19–21 [1991] highlighted with all obviousness the fact that the CPSU was never a party. It was a special mechanism for the formation and implementation of political power by merging with state structures or their direct subordination to the CPSU. The leading structures of the CPSU carried out their own dictatorship, created a property basis for unlimited power at the state expense*."

During the preparation for consideration of the complaint, the Constitutional Court received petitions from people's deputies who had the opposite point of view — they insisted that the decrees issued by Boris Yeltsin were constitutional, but the organizations themselves — the CPSU and the Communist Party of the RSFSR — were not. In total, more than a hundred deputies participated in the constitutional process.

The essence of the decision and its reasons

Almost twenty years later, in an interview with Novaya Gazeta, the judge of the Constitutional Court **Gadis Gadzhiev** said that in this case "the decision was largely dictated by political reasons": "It was not born only from legal logic. The feeling was that if we take a radical path and recognize as criminal not only the structures of the CPSU, but the entire party, then this, together with their family members, will be a very large part of society. And this will cause a serious split in society. I didn't want to rock the boat, and we had to look for some kind of reconciling solution."

The "conciliatory decision" turned out to be the recognition by Boris Yeltsin of a **lawful** decree on the dissolution of the structures of the CPSU and the Communist Party of the RSFSR.

The Constitutional Court noted that the governing structures of these associations "*appropriated state power and actively exercised them, preventing the normal activities of constitutional authorities*", which became "*the legal basis for the liquidation of these structures by decree of the highest official of the Russian Federation*": "*Actions of the President were dictated by the objective need to eliminate a possibility of a return to the previous situation, to exclude the structures whose daily practice was based on the fact that the CPSU occupied a position in the state mechanism that was not consistent with the foundations of the constitutional order*."

The Constitutional Court classified the paragraphs of the decree on the dissolution of primary organizations created on a territorial basis as **unconstitutional**. The Constitutional Court left the property issue for consideration by arbitration courts.

The judges did not at all evaluate the constitutionality of the CPSU and the Communist Party of the RSFSR, referring to the fact that it is impossible to assess the constitutionality of what no longer exists: in August-September 1991, the CPSU actually disintegrated and lost the status of an all-union organization.

The "reconciling" decision of the Constitutional Court, namely its clause on the possibility of restoring the activities of the primary cells of the party, allowed Gennady Zyuganov to recreate, register and subsequently develop the Communist Party of the Russian Federation (KPRF).

Dissenting opinion

Three judges disagreed with the general decision and expressed dissenting opinions.

Anatoly Kononov considered that the division into primary "public" organizations and "leading structures of the CPSU" is not correct in order to resolve the issue of the constitutionality of the organization as a whole. In his opinion, it is unfair and unlawful to lay responsibility for all decisions of the CPSU only on a "narrow group of communist functionaries," as the Constitutional Court did in its decision: "*They [primary organizations] as the basis of the party acted in accordance with the general line of the CPSU, not only unanimously approved all unconstitutional decisions and activities of the leading structures of the CPSU, but actively promoted them and, using the same methods, means, ideas, executed them, relying on party, disciplinary influence, in necessary cases involving the repressive apparatus of law enforcement agencies*." Because of this, according to Kononov, the clause of Yeltsin's decree on the dissolution of primary organizations should be considered constitutional.

The judge also did not agree with the refusal to consider the petition on the unconstitutionality of the CPSU itself, noting that enough materials were collected in the process (including "reliable evidence of the CPSU's gross violations of a large number of constitutional norms and current legislation") to make any decision on this issue. "The evasion of resolving a petition to verify the constitutionality of the CPSU and its component part — the Communist Party of the RSFSR is, in essence, a denial of justice, since no other body will ever again be able to give a competent legal assessment of the state-legal side of this phenomenon, which had a total impact on the entire political, economic and social system of Russia for many decades. Kononov himself was convinced that the CPSU could be qualified as a criminal organization."

Judge **Viktor Luchin**, in a dissenting opinion, did not agree with the possibility of interpreting the president's powers on the basis of the "residual principle": "Having assumed the responsibility to decide the fate of the party, the President of Russia, in essence, appropriated discretionary power based on the predominance of expediency over legality, and in order to achieve this goal, he used measures and sanctions against a political party that were not provided for by law." According to the judge, the contested documents were adopted in violation of the principle of separation of powers, in excess of authority and inappropriate subject.

Due to the refusal to consider the petition for the constitutionality of the CPSU, according to Luchin, "*it was possible to avoid a deep politicization of the process*" and "*to make a decision that is largely balanced, taking into account the "expectations" of society and other circumstances in the case, but at the same time contradictory in its constitutionally legal grounds and consequences*". Among them, Luchin noted "a compromise, situational nature", and the decision itself, in his opinion, "absorbed elements of political expediency, and not just legal validity."

Judge **Boris Ebzeev**, in the most voluminous of three opinions, wrote that the activities of the governing bodies of the CPSU as of November 30, 1992 cannot be recognized as constitutional, "but this does not mean that the executive branch has the right, at its own discretion, to take restrictive measures against such a public association, they are possible in our country by a court decision." To recognize a party as unconstitutional, it was necessary to study a number of fundamental theoretical and practical criteria, which the Constitutional Court did not do in its judgment.

Referendum “Yes-yes-no-yes”

- **Decision:** Judgment of the Constitutional Court No. 8-P of April 21, 1993
- **Applicants:** group of people's deputies
- **Contested act:** part 2, paragraph 2 of the Resolution of the Congress of People's Deputies of the Russian Federation of March 29, 1993 “On the All-Russian Referendum on April 25, 1993, the procedure for summarizing its results and the mechanism for implementing the results of the referendum”
- **Result:** the contested norm was declared **partially unconstitutional** — in relation to the procedure for summing up the results on two of the four issues submitted to the referendum

Plot

A group of people's deputies appealed to the Constitutional Court with a demand to declare one of the norms of the resolution on holding a referendum unconstitutional — the norm was adopted at the extraordinary Congress of People's Deputies in March 1993. The popular vote was supposed to put an end to the political crisis provoked by the conflict between the two branches of government. The Russians were asked four questions. They were:

Do you trust the President of the Russian Federation B.N. Yeltsin?

Do you approve of the socio-economic policy pursued by the President of the Russian Federation and the Government of the Russian Federation since 1992?

Do you consider it necessary to hold early presidential elections in the Russian Federation?

Do you consider it necessary to hold early elections of people's deputies of the Russian Federation?

In part 2, clause 2 of the resolution, it was stated that decisions on all four issues would be considered adopted if more than half of the citizens who have the right to be included in the voting lists vote for them. The initiators of the proceedings insisted that such a procedure for counting votes in a referendum is required only for issues of adopting, amending and supplementing the Constitution. And since the questions proposed for the referendum, according to the authors of the appeal to the Constitutional Court, were not among those, positive decisions on them should be made if more than half of those who came to the polling stations vote for them.

The essence of the decision

The Constitutional Court **declared the norm unconstitutional** in terms of summing up the voting results on the first two issues, but did not find inconsistencies with the Constitution on issues 3 and 4. The court considered that the first two questions of the referendum — on confidence in the president and approval of the economic policy of the government — are not of a legal, but of a moral, evaluative and political nature, and therefore a decision on them should be made taking into account the percentage of votes from the citizens who came to the polling stations. The decision on the 3rd and 4th issues, which decided the fate of early elections, is, in the opinion of the court, of a constitutional nature, and it should be taken by a majority vote of the total number of voters.

Dissenting opinions

Judge of the Constitutional Court (now retired) **Tamara Morshchakova** pointed out that by its decision the Constitutional Court actually recognized that an affirmative answer to the third and fourth questions (on the need for early elections of the president and parliament deputies) predetermines the introduction of amendments and additions to the Constitution. However, the issues submitted to the referendum, according to the judge, were not formulated “as related to the change in the Constitution.” According to the law “On the Referendum of the RSFSR”, on issues not related to the adoption, amendment and addition of the Constitution, a decision at a referendum is considered adopted if more than half of the citizens who

participated in the vote voted for it. Having introduced a different procedure for summing up the results of the referendum, the congress, as indicated in the dissenting opinion, adopted a resolution that was contrary to the Constitution and the law on the referendum. According to Morshchakova, the congress had no right to change the procedure established by the Constitution and the law "On the referendum of the RSFSR" for its holding.

Judge **Ernest Ametistov** also concluded that the questions 3 and 4 submitted to the referendum "do not belong to the category of issues of adoption, amendment and addition to the Constitution", therefore, decisions on these questions should be considered adopted if more than half of the citizens who took part in the voting vote for them, in accordance with the Referendum Law. The judge came to the conclusion that the norm that became the subject of the proceedings was contrary to the Constitution.

What happened next

As a result of the referendum campaign, a slogan was born that reflected the results of the will of citizens and later became famous — **"Yes-yes-no-yes"**: citizens answered in the affirmative to all questions, except for the third — about the need for early presidential elections. However, 50 % of the votes from the total number of voters, as required by the resolution challenged in the Constitutional Court, were not collected for the early elections of the president and people's deputies.

It was because of this principle of counting votes that the chance to resolve the crisis through a referendum was lost. There were no legitimate grounds for the early termination of the legislature of the acting Supreme Council, and in October 1993 this was done by force. However, in the same year, a new Constitution was adopted with enhanced presidential powers and a bicameral parliament. Elections to the State Duma and the Federation Council were held. The political and legal assessment of the results of the referendum is inseparable from the assessment of the events that unfolded after it and the constitutionality of the actions of the conflicting parties.

"This is such an illustrative case of how the Constitutional Court can arrange the largest political crisis, and a better example cannot be found," **Tamara Morshchakova** comments on this case 30 years later. "The conflict would have been settled if simultaneous new presidential and parliamentary elections had been held. New legislatures of presidential and parliamentary power would have begun. And the people would have participated in this, choosing those whom they wanted. The best way to resolve any political conflicts is through elections. Not a shooting, of course, and not an impeachment of the president, of course, and not a new president spontaneously proclaimed at the request of the parliament, of course.

But there was no democratic settlement of the situation, and the opposition of state bodies intensified. Everything that followed, by no means a peaceful course of events, was the result of this decision of the Constitutional Court, which turned out to be fatal. Now no one pays much attention to it, but it changed the situation for the worse: then it was a direct path to conflict, and it was drawn precisely by the Constitutional Court."

Do convicts have the right to housing?

- **Decision:** Judgment of the Constitutional Court No. 8-P of June 23, 1995
- **Applicants:** Murom city court of the Vladimir region, as well as citizens E.R. Taknova, E.A. Ogloblin and A.N. Vashchuk
- **Contested acts:** part 1 and paragraph 8, part 2 of Art. 60 of the Housing Code of the RSFSR
- **Result:** the contested norms **do not comply** with the Constitution of the Russian Federation

Plot

The reason for the consideration was the request of the Murom City People's Court (Vladimir Region), which was in the process of a civil case on the claim of the "Krasny Luch" Joint-Stock Company against

A.N. Kuznetsov. For the theft of several electricity meters, the latter was sentenced to two years in prison. “Krasnyy Luch”, being the owner of the house, in one of the apartments of which the convict lived, demanded that he be recognized as having lost the right to use the living quarters.

The fact is that the provisions of Part 1 of Art. 60 of the Housing Code of the RSFSR provided that the dwelling (if it is not the private property of the tenant) is retained by the temporarily absent tenant for only six months. At the same time, paragraph 8 of part 2 of the same article contained an additional condition according to which housing for those sentenced to deprivation of liberty for a term of more than six months was retained only until the sentence was carried out.

Similar complaints were received by the Constitutional Court from several more citizens — E.R. Taknova, E.A. Ogloblin and A.N. Vashchuk, who on the same grounds at various times were recognized as having lost the right to use housing. And since the cases concerned the same subject, the CC joined them in one proceeding.

The essence of the decision

All contested norms of the Housing Code of the RSFSR were found by the Constitutional Court to be **inconsistent** with the Constitution.

The decision states that the Basic Law proclaims the person's rights and freedoms the highest value, and the restriction in them can be established “*only to the extent necessary to protect the foundations of the constitutional order, morality, health, rights and legitimate interests of others ensuring the defense of the country and the security of the state*”. The provisions of Art. 60 of the Housing Code, as the Constitutional Court considered, do not meet these requirements, and the temporary absence of the tenant or members of his family in the dwelling does not threaten the listed values.

The Constitutional Court also pointed out that the mere temporary absence of a person in the provided housing, including in connection with his conviction to imprisonment, cannot be regarded as improper performance by the tenant of his housing duties, as well as the basis for depriving him of the right to use it.

Moreover, as the Court found, the norm violates the constitutional rights of a person to free movement, choice of place of stay and residence, as well as the right to housing, which no one can be deprived of arbitrarily. The norm also introduces an additional punishment not provided for by criminal law in the form of deprivation of housing, which in fact is discrimination on the basis of a criminal record.

As a result, the Murom City Court was obliged to proceed when deciding on the case of A.N. Kuznetsov from the position reflected in the ruling issued by the Constitutional Court. The cases of the other applicants were also subject to revision, and the contested articles of the Housing Code were declared invalid.

Dissenting opinions

Disagreement with the decision of the Constitutional Court in a dissenting opinion was expressed by Judge **Yuri Danilov**. He stated that the provisions of the Housing Code under consideration still do not contradict the Constitution “both in their content and in their meaning.”

Yuri Danilov considered that the loss by a citizen of the right to a specific housing does not entail the loss of the constitutional right to housing, since he can realize it again “at any moment”. At the same time, the judge drew attention to Part 1 of Art. 40 of the Constitution, which prohibits not “any”, but only “arbitrary” deprivation of a citizen's right to housing.

Judge Danilov also clarified that a citizen who occupies a particular dwelling may lose the right to it “due to various circumstances”: such as, for example, by a court judgment on the confiscation of home ownership, due to the impossibility of living together with him or moving to another permanent place of residence and etc. Serving a sentence in places of deprivation of liberty, according to the judge, cannot be considered a “good reason” for absence from a dwelling. On the contrary, the judge called these “actions” “abuse of one’s rights”, since the residential premises are intended “for permanent residence of citizens”, and failure to

comply with this condition not only “discredits” its purpose, but also violates the rights and legitimate interests of other persons, and in the first place — the owners of residential premises.

Why has this decision been important?

“The Constitutional Court drew attention to the fact that single citizens sentenced to deprivation of liberty are automatically deprived by the housing authorities of the residential premises of which they were tenants, which is a violation of a number of constitutional rights — the right to freedom of movement, the right to housing and freedom from discrimination,” says lawyer **Alexander Peredruk**. “It may seem that this Judgment of the Constitutional Court has mattered only for those sentenced to deprivation of liberty, but in reality it has been important for the whole society.

The penitentiary system should be aimed at the resocialization of criminals. Obviously, after release, a citizen needs to find a job, which is unlikely to happen instantly. If, in addition to this, he encounters the problem of lack of housing, then these difficulties may become an incentive to return to the search for illegal sources of livelihood, that is, they will return him to a criminal path, which essentially eliminates the meaning of the previous punishment. Therefore, the decision of the Constitutional Court can be fully called protecting both the private interest (of a certain category of persons) and the public one.”

Constitutionality of Chechen decrees

- **Decision:** Judgment of the Constitutional Court No. 10-P of July 31, 1995
- **Applicants:** group of deputies of the Federal Assembly of the Russian Federation
- **Contested acts:** decrees of the President of the Russian Federation No. 2137 “On measures to restore constitutional law and order on the territory of the Chechen Republic”, No. 2166 “On measures to suppress the activities of illegal armed groups on the territory of the Chechen Republic and in the zone of the Ossetian-Ingush conflict”, No. 1833 “On the Basic Provisions Military Doctrine of the Russian Federation” and Government Decree No. 1360 “On Ensuring State Security and Territorial Integrity of the Russian Federation, Legality, Rights and Freedoms of Citizens, Disarmament of Illegal Armed Groups on the Territory of the Chechen Republic and Adjacent Regions of the North Caucasus”
- **Result:** the contested acts **comply** with the Constitution of the Russian Federation

Plot

A group of deputies of the State Duma sent a request to the Constitutional Court to check the government's decree on the disarmament of illegal armed formations on the territory of the Chechen Republic and President Boris Yeltsin's decree on military doctrine for compliance with the Basic Law.

Later, the Federation Council also sent its request to the Constitutional Court — the number of disputed acts increased to five, but all of them, according to the applicants, constituted “a unified system of normative legal acts and led to the misuse of the Armed Forces of the Russian Federation”, which was legally possible only within the framework of state of emergency or martial law. The disputed documents preceded the entry of the Russian armed forces into the territory of the Chechen Republic on 11 December 1994.

According to the applicants, the decrees actually declared a state of emergency in Chechnya and caused massive violations of the constitutional rights and freedoms of citizens.

The essence of the decision

The Constitutional Court declared Yeltsin's decree “On Measures to Suppress the Activities of Illegal Armed Groups on the Territory of the Chechen Republic and in the Zone of the Ossetian-Ingush Conflict” constitutional, ceasing to check other decrees. Thus, in the case of the secret decree “On measures to restore constitutional law and order on the territory of the Chechen Republic”, the fact that at the time of the consideration of the case by the Constitutional Court it had already lost its force, worked.

Even during open hearings, the “Kommersant” newspaper noted that “*on the sidelines of the house on Ilyinka [before moving from Moscow to St. Petersburg, the Constitutional Court was located there] almost no one hides the outcome — the decision will be in favor of the president*.” His representatives in court insisted that the use of force in Chechnya was justified and comparable to the threat to Russia's security posed by the regime operating in the republic at that time.

As a result, the Constitutional Court declared only two provisions from the government decree unconstitutional — on the expulsion of persons who pose a threat to public safety and personal security of citizens from the Chechen Republic, as well as on the deprivation of accreditation of journalists working in the zone of armed conflict.

Dissenting opinions

Almost half of the judges of the Constitutional Court expressed dissenting opinions on the case.

Ernest Ametistov did not agree with the procedure for refusing to consider Boris Yeltsin's secret decree, but at the same time he generally supported the decision of the Constitutional Court. **Nikolai Vitruk** did not agree that Boris Yeltsin had the right to transfer exclusive powers to use all the means available to the state “*to ensure state security, the rule of law, the rights and freedoms of citizens, the protection of public order, the fight against crime, the disarmament of all illegal armed formations*” government, as this is contrary to the principle of separation of powers.

Most of the judges, including **Anatoly Kononov** and **Gadis Gadzhiev**, did not agree, in particular, with the wording about the possibility of using “all available means”. Thus, Kononov noted that this violated the basic principle of international norms, according to which “the rights of the conflicting parties to choose the methods and means of waging war are not unlimited.” “*If we agree that the Decrees of the President and the Decree of the Government comply with the Constitution, there is another question that arises: what is the Constitution itself, on the basis of which decisions can be made that open the way to war with one’s own people?*” — wrote **Viktor Luchin**.

Valery Zorkin also did not agree with the general decision. Later, in an interview with “Kommersant”, he stated that the judges had no information about the emergency nature of the situation in Chechnya that would motivate immediate intervention: “*Besides, nothing prevented Yeltsin from turning to the Federation Council anyway. Here, the facts of the attack and casualties were confirmed not only by the Russian side, but also by American agencies, which referred to US satellite intelligence. I believe that in conditions where the state has irrefutable evidence of the conduct of hostilities that can lead to the mass death of its compatriots, it has the right to use the concept of peace enforcement*.”

Not everyone was satisfied with the termination of proceedings to verify Yeltsin's secret decree — some of the judges insisted that the Constitutional Court had all the powers to evaluate the issued document.

Defenders in cases of state secrets

- **Decision:** Judgment of the Constitutional Court No. 8-P of March 27, 1996
- **Applicants:** V.M. Gurzhiyants, V.N. Sintsov, V.N. Bugrov and A.K. Nikitin
- **Contested acts:** Art. 1 and Art. 21 of the Federal Law “On State Secrets”
- **Result:** the contested acts in the context of lawyers' rights are declared **unconstitutional**

Plot

The former assistant to the representative of “Aeroflot” in Zimbabwe, Vladimir Gurzhiyants, was accused of “treason” (Art. 64 of the Criminal Code of the RSFSR). According to the Chief Military Prosecutor's Office, during 1992–1993, Vladimir Gurzhiyants handed over to the Zimbabwean intelligence agents of the Russian special services, who worked under the guise of official representations. In the spring of 1995, the military

court of the Moscow Military District sentenced Gurzhiyants to 8 years of strict regime with confiscation of property.

At that time, the Constitutional Court had already agreed to hear the Gurzhiyants's case — his lawyer Dmitry Shteinberg was not allowed to meet with his client and get acquainted with the case materials. The applicant was thus defended by another lawyer, who was appointed by the Federal Counterintelligence Service.

The basis for such a refusal was the absence of a special access to state secrets by the defender in the prescribed form, provided for in Art. 21 of the Law "On State Secrets". The court pointed out that according to Art. 1 of the same law, its provisions are binding on the territory of Russia and abroad by representative, executive and judicial authorities, as well as officials and citizens.

Believing that his constitutional right to receive qualified legal assistance, including the assistance of a chosen lawyer, was violated, Vladimir Gurzhiyants appealed to the Constitutional Court with a complaint about the constitutionality of these legal norms. Complaints with similar demands were received from several more people — Vadim Sintsov, Director for Foreign Economic Relations of JSC "Special Engineering and Metallurgy", Valery Bugrov, and environmentalist Alexander Nikitin. Their cases were combined into one.

The essence of the decision

The Constitutional Court recalled that the Constitution guarantees everyone the right to freely seek, receive, transmit, produce and disseminate information in any legal way. But at the same time, its text stipulates that the federal law may contain a list of information constituting a state secret (Part 4 of Art. 29). Based on this, the legislator has the right not only to establish this list, but also to determine the procedure for access to the information indicated in it. Art. 1 of the Law on State Secrets does not contradict the Constitution.

However, the court noted that the procedure for access to classified information, established by the Law on State Secrets, does not exclude access to them by people with a special legal status. For example, deputies of the Federation Council or judges. The opposite would be contrary to the nature of their constitutional status, the peculiarities of holding office and the functions they perform. At the same time, the safety of state secrets in such cases is guaranteed by various liability mechanisms.

The court also recalled that the lawyer is a participant in the process of criminal cases, the procedure for which is determined by the Code of Criminal Procedure of the RSFSR. This procedure is unified and obligatory in all criminal cases and for all courts, as well as prosecution, preliminary investigation and inquiry bodies. At the same time, the Code of Criminal Procedure, the Court clarified, does not contain requirements for any preliminary verification of a lawyer and special permission to participate in cases.

In this regard, the Constitutional Court concluded that the challenged provision on the procedure for access to state secrets cannot be applied to a lawyer participating in criminal proceedings as a defense counsel. The court referred to the fact that the Constitution of the Russian Federation, international legal acts on human rights and federal laws require from the state adequate guarantees for the protection of the rights and freedoms of people involved in criminal proceedings. For example, Art. 48 of the Constitution of the Russian Federation guarantees the right of everyone to qualified legal assistance, including a lawyer at all stages of criminal prosecution.

According to Art. 14 of the International Covenant on Civil and Political Rights, which is an integral part of the legal system of Russia, every citizen, when considering the charges against him, has the right to defend himself with the help of a lawyer chosen by him.

The Constitutional Court decided that the refusal to the accused or suspected to retain a lawyer of his choice due to his lack of access to state secrets, as well as the proposal to choose a lawyer from a certain circle of lawyers with such access, are unlawful. This also contradicts the principle of competitiveness and equality of the parties in court, enshrined in Part 3 of Art. 123 of the Constitution of the Russian Federation.

The Constitutional Court also drew attention to the fact that the legislation contains enough mechanisms capable of preserving state secrets within the framework of judicial proceedings — they also exclude disproportionate restriction of human rights and freedoms. Examples of such mechanisms are, in particular, the warning of participants in the process of non-disclosure of state secrets that became known to them in connection with the proceedings in a criminal case, and bringing them to criminal responsibility in case of its disclosure. The preservation of state secrets in criminal proceedings, the Constitutional Court recalled, is also ensured by the provisions on professional secrecy in the legislation on the bar.

As a result, the Constitutional Court recognized Art. 1 and Art. 21 of the Law "On State Secrets" corresponding to the Constitution. However, to extend the provisions of Art. 21 on the defense attorneys, by court order, is illegal. The Constitutional Court decided to amend the legislation and review the applicants' cases.

Why has this decision been important?

Lawyers who work with those accused of treason still feel the positive effects of this ruling to this day, says lawyer **Ivan Pavlov**[1], who specializes in criminal cases involving state secrets.

"This is a revolutionary decision. And I am very proud that I had something to do with him — although I personally did not participate [in this process], my mentor Yuri Schmidt, with whom I worked together on the Alexander Nikitin case, did. The work, of course, was carried out jointly," says Pavlov. "And I consider myself involved in this decision, one of the few that can be called revolutionary."

Now there are no such decisions. In some of its further decisions in the early 2000s, the Constitutional Court even extended the scope of this ruling beyond the scope of criminal cases. And he said that for the participation of lawyers in cases that are related to state secrets in the framework of arbitration, civil, legal proceedings, it is also enough to use a non-disclosure agreement for information constituting a state secret, and thereby allow them to participate in the case and familiarize themselves with the materials. Because the right to judicial protection prevails over other rights and obligations that are associated with the circulation of information constituting a state secret.

But still, the March 1996 judgement was the first step. What was the background? They did not want to allow us to participate in the case of Alexander Nikitin. The investigators said that if we had a permit, they would let us in. They offered the client to choose a lawyer with a security clearance, usually from former security officials who still had security clearance after their dismissal. In Soviet times, there was such a practice when only "special" lawyers were admitted to a certain category of cases. And when an ordinary lawyer came to the investigator, he was told this: "Of course, we will allow you, but let the chairman of the presidium of the Bar Association sign this warrant." But the chairman never signed such a permit. And this rule has flowed from the Soviet to Russian times. And since there were more colleges, the security agencies simply refused, citing a lack of access.

Art. 21 of the Law on State Secrets clearly stated that permission was needed. And this was just the reason — several applicants applied to the Constitutional Court at once, and the Constitutional Court then made this decision.

If you look, last year we tried to recognize the right of a lawyer without lawyer status to participate in such cases under the Code of Administrative Procedure. And the Court has already departed from the position it has taken in a number of its other judgments. He said: "No, after all, not all lawyers, but only attorneys, have the right." Although earlier in its rulings the Court spoke not only about attorneys, but about all participants in a particular legal proceeding.

On the question of how the right to defense, the completeness of the examination of evidence and state secrets are combined today in the framework of a judicial investigation, commented **Tamara Morshchakova**, Professor at the National Research University Higher School of Economics:

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[1] Included in the list of foreign agents.

"There can be no secrets from the court. The existence of state secrets from the court, which excludes the possibility of examining any documents, would be contrary to the fullness of the judiciary. And the protection of state secrets in the procedural sense, in the order of legal proceedings, is provided by other methods: a closed meeting, obligations not to disclose the secret, which are imposed on the participants in the process.

Now, in general, they come to the court and say: "We will not tell you why we are expelling this person, but we declare this organization undesirable, because security interests require us not to disclose it."

There can be no security interests that require something not to be disclosed in front of a court."

Who sets the border crossing fees?

- **Decision:** Judgment of the Constitutional Court No. 16-P of November 11, 1997
- **Applicant:** Head of the Administration of the Khabarovsk Territory V.I. Ishaev
- **Contested act:** Art. 11.1 of the Law of the Russian Federation "On the State Border" (now — no longer in force)
- **Result:** part 2 of the contested article is **contrary** to the Constitution, parts 1 and 3 — **not**

Plot

On November 26, 1996, at the initiative of a group of State Duma deputies, amendments were adopted to the Law "On the State Border of the Russian Federation", according to which a fee was introduced for border processing of documents. Specific rates were set for each type of movement of goods, persons across the border, as well as for the inspection of goods and vehicles.

"After the law came into force, a number of subjects of the right to legislative initiative (primarily the heads of administrations and legislative bodies of the border regions, in particular the Murmansk, Arkhangelsk, Kaliningrad regions, Primorsky, Khabarovsk Territories), expressed disagreement both with the amount of fees and with the essence of the law," wrote RAPSI.

In January 1997, the Governor of the Khabarovsk Territory, Viktor Ishaev, applied to the Constitutional Court of the Russian Federation with a request to verify the constitutionality of Art. 11.1 of this law, taking into account the amendments.

The first part of the disputed article provided for the introduction of a fee for clearance at border control, and the second part determined the amount of the fee charged from persons crossing the state border, from owners of vehicles and cargo for inspection, and also established that the procedure for collecting the fee should be determined by the Government of the Russian Federation. However, as noted by the Constitutional Court, the relevant acts were not issued by the Government of the Russian Federation, therefore, in fact, no fee was charged for border clearance.

On July 19, 1997, Art. 11.1 of the State Border Law was again amended. The new version of the second part of the article already said that not only the procedure for collection, but also the amount of the fee for border clearance, as well as the categories of persons exempted from paying the specified fee, will now be established by the Government of the Russian Federation.

Then Ishaev sent a second request to the Constitutional Court of the Russian Federation clarifying his position. According to the governor, the introduction of a border clearance fee is an unacceptable restriction of the constitutional rights of everyone to freedom of travel outside the Russian Federation and unhindered return, does not comply with international law and a number of international treaties of the Russian Federation, and violates the guarantees of freedom of economic activity. In addition, Ishaev said, the federal tax, including its integral elements such as the tax base, rates and benefits, can only be established by federal law, and the legislator is not entitled to delegate this authority to the government.

The essence of the decision

The CC reasoned that the border clearance fee is indeed, in fact, a tax payment: it is a mandatory fee for public authorities, which goes to a special budget fund. And the establishment of taxes, including all their essential elements (tax source, tax rate, payment deadlines, etc.), belongs to the powers of the federal legislature.

In the disputed article of the law, the establishment of these elements was transferred to the jurisdiction of the Government of the Russian Federation. This may lead to the fact that tax liabilities "may be changed for the worse for the taxpayer in a simplified manner" by the executive branch, the Constitutional Court emphasized in its judgment.

As a result, the Constitutional Court recognized that only those provisions of the second part of Art. 11.1 of the Law of the Russian Federation "On the State Border of the Russian Federation", referring specifically to the establishment by the Government of the Russian Federation of the amount of the fee for border clearance, as well as the categories of persons exempted from payment of this fee, are inconsistent with Art. 57 of the Russian Constitution.

Dissenting opinion

Two judges of the Constitutional Court expressed dissenting opinions on this case.

Thus, **Anatoly Kononov** pointed out that the Constitutional Court assessed the disputed article of the Law "On the State Border of the Russian Federation" only from the point of view of the principle of delimitation of competence between federal state authorities and actually refused to look at the norm in terms of content. In addition, in the opinion of the judge, no substantive arguments were brought forward to refute the applicant's arguments in the case.

Kononov emphasized that at the court session, none of the interviewed officials could explain what the term "border clearance" meant in terms of content, therefore, the introduction of the fee was not due to the provision of any special services or benefits to payers, which means "not accompanied by a comparison of the payment with any costs or labor costs of the border service." He added that the entire border clearance fee should go to the income of the Development Fund of the Federal Border Service. "Such a way of forming the financial base of government bodies is nothing more than the commercialization of their activities," Kononov said.

The judge considered that since the border clearance fee is essentially identical to the customs duty, its introduction gives rise to double taxation, and therefore does not comply with constitutional principles.

Moreover, Kononov stressed that the collection of such a fee when crossing the state border not only from individuals, but also from owners of vehicles and cargo is contrary to a number of international agreements with the participation of the Russian Federation on air traffic, on road, sea and rail transportation. And, according to the Constitution of the Russian Federation, these agreements take precedence over federal legislation.

Judge **Nikolai Vitruk**, in turn, decided that since both parts of the disputed article are "inseparable unity", it is illogical to give them different constitutional and legal qualifications. The first part of the article of the law does not establish essential elements mandatory for the federal tax, which means that this norm is fiction, he reasoned. "The law recognizes as existing something that does not actually exist, and such a norm cannot be recognized as corresponding (or not contradicting) to the Constitution of the Russian Federation," Vitruk explained.

What happened next

In December 1997, already taking into account the decision of the Constitutional Court, a group of deputies of the State Duma submitted for consideration a new draft amendment to the Law on the State Border. It

indicated specific rates for the processing of border documents, exit and entry visas, movement of goods, etc.

At the same time, the State Duma received several bills at once — from the Legislative Assembly of the Republic of Karelia, member of the Federation Council Viktor Stepanov and the Murmansk Regional Duma — which raised the question of excluding the border tax. However, in the spring of 1998, the State Duma adopted amendments on the introduction of the fee in the first reading, rejecting alternative options.

In June 1998, the deputies adopted the bill in the second and third readings. That same summer, amendments to the law were approved by the Federation Council and signed by the president.

Two years later, the State Duma adopted the law "On the Enactment of Part Two of the Tax Code of the Russian Federation", by which the amendment on the introduction of the border fee was declared invalid from January 1, 2001.

Can courts test laws and overturn regulations?

- **Decision:** Judgment of the Constitutional Court No. 19-P of June 16, 1998
- **Applicants:** Legislative Assembly of the Republic of Karelia and State Council of the Komi Republic
- **Interpreted acts:** Art. 125, 126 and 127 (now excluded) of the Constitution of the Russian Federation
- **Result:** compliance of the norm with the Constitution is established only by the Constitutional Court of Russia

Plot

The reason for the consideration of the case was the requests of the Karelian Legislative Assembly and the State Council of the Komi Republic on the interpretation of Art. 125, 126 and 127 of the Constitution of the Russian Federation.

The applicants noted that these provisions introduce uncertainty into the scope of the competence of the courts — they allow them to recognize laws and other regulations as unconstitutional — and as a result, not valid. The applicants considered that such review of the laws could only be carried out by the Constitutional Court.

The Constitutional Court had to find out whether the powers of the courts of general jurisdiction and arbitration courts follow from the provisions of the Constitution to check the laws for constitutionality and recognize them as invalid.

The essence of the decision

The Constitutional Court recalled that Art. 125 of the Constitution assigns it to him to check the normative acts for compliance with the main law of the country, after which they may be invalidated. We are talking about resolving cases on the constitutionality of federal laws, regulations of the President of the Russian Federation, the Federation Council, the State Duma, the Government of the Russian Federation, the constitutions of the republics, charters of territories and regions, as well as laws and other regulations of Russian subjects issued on issues of state power.

The Court emphasized that other judicial bodies do not have such powers. But if a court of general jurisdiction or an arbitration court comes to the conclusion that a federal or regional law is unconstitutional, then it is obliged to apply to the Constitutional Court with a request to conduct such a check.

At the same time, as the Constitutional Court pointed out, Art. 125, 126 and 127 of the Constitution do not deprive the courts of general jurisdiction and arbitration courts (outside of the consideration of a specific case) of the opportunity to check normative acts at a level lower than the federal law for compliance with an act that has greater legal force (except constitution). Such powers of the courts can be established and consolidated by federal constitutional law.

Dissenting opinions

According to Judge Nikolai Vitruk, when interpreting Art. 125, 126 and 127 of the Constitution, the Constitutional Court did not take into account "the difference between the categories of constitutionality and legality". He drew attention to the fact that the verification of constitutionality is carried out at two levels of the courts — federal and the level of constituent entities. The ruling of the Constitutional Court, according to the judge, does not provide a clear answer to the question of which courts can check for compliance with the Constitution and, therefore, invalidate the normative acts of ministries, departments and others.

Judge Vitruk believed that the legality of normative acts (that is, for compliance with an act of greater legal force than the Constitution) can be carried out by courts of general jurisdiction and arbitration courts not only when considering specific cases (clause 3 of Art. 5 of the Federal Law "On judicial system of the Russian Federation"), but also in the order of normative control.

The starting point in resolving questions about the powers of courts of general jurisdiction and arbitration courts to check normative acts for compliance with the Constitution of the Russian Federation, the constitutions (charters) of the constituent entities of the Russian Federation, as well as for the compliance of by-laws with acts of greater legal force in the procedure of normative control should be the constitutional provisions on the right of citizens to judicial protection.

"There should not be such a legal situation in which a citizen could not raise the issue of repealing an unconstitutional or illegal regulatory act (of a federal or a constituent entity of the Russian Federation) in court," Judge Vitruk said in his dissenting opinion.

Gadis Gadzhiev expressed the opinion that when interpreting Art. 125 of the Constitution, the Constitutional Court did not take into account its own legal position, formulated in a number of previous decisions on the inadmissibility of accepting requests for interpretation of constitutional provisions specified in the current legislation. In such cases, as the judge pointed out, under the guise of an interpretation for constitutionality, norms unconstitutionality of which has not been questioned by the applicant, are being checked.

Gadis Gadzhiev drew attention to the decision of the Plenum of the Supreme Court of the Russian Federation of October 31, 1995 No. 8 "On some issues of the application of the Constitution of the Russian Federation by the courts in the administration of justice", which explained that the courts, based on the provisions of Part 4 of Art. 125 of the Constitution of the Russian Federation, may (but are not required) to apply to the Constitutional Court.

Thus, the judge pointed to the dispute on jurisdiction between the Plenum of the Supreme Court and the Constitutional Court, the resolution of which by one of the participants, who are clearly interested in this, violates Art. 93 of the Federal Law on the Constitutional Court and the general legal principle enshrined in it "no one can be a judge in his own case."

The judge also pointed out that citizens of Russia cannot be limited in challenging the laws of the subjects of the Russian Federation by the interpretation of Art. 125 of the Constitution, which, in his opinion, limits the right to judicial protection. Gadis Gadzhiev argues that such a restriction of constitutional rights is possible only through the adoption of a federal law, and not through interpretation by the Constitutional Court.

According to the judge, the interpretation cannot result in limiting the powers of courts of general jurisdiction and arbitration courts to verify (in the manner of administrative proceedings) the constitutionality of normative acts of ministries and departments of the federal and regional levels. According to Gadis Gadzhiev, the courts are not only entitled, but also obliged to recognize such by-laws as unconstitutional and invalid on the basis of complaints from individuals — "in the manner of direct application of the constitutional provision on the right to judicial protection."

"*The conclusions of the courts (in particular, the higher courts) on the contradiction of the norm of the law of the Constitution of the Russian Federation do not mean that it has become invalid. However, such court decisions represent the emergence of judicial law, the development of which is extremely necessary for the Russian legal system in order to overcome positivist approaches*,**"** the judge wrote.

And what does all this mean?

“Some theorists misinterpret the decision of the Constitutional Court, stating that the Constitutional Court denied that the courts checked the norms from the point of view of their compliance with the Constitution, and interpret this as a ban on judicial control over the content of the norm in specific cases,” said **Tamara Morshchakova**, a retired judge of the Constitutional Court. “At the same time, the Constitutional Court indicated that any court can apply only the law that is consistent with the Constitution. But any court cannot invalidate an unconstitutional norm. The decision emphasizes that any court can set it aside and, on the basis of other norms and general legal principles, decide the case.

But even when the court resolves the case, it must still apply to the Constitutional Court so that the Constitutional Court confirms the assessment of the norm that is not applied in a particular case as unconstitutional. That is, the courts were required to write a mandatory request to the Constitutional Court to invalidate the law that they considered inapplicable as unconstitutional.”

The case of the extension of the presidential powers

- **Decision:** Decision of the Constitutional Court No. 134-O of November 5, 1998
- **Applicant:** State Duma of the Federal Assembly of the Russian Federation
- **Interpreted norm:** Part 3 Art. 81 of the Constitution of the Russian Federation and paragraph 3 of section two “Final and transitional provisions”
- **Result:** presidential term limits

Plot

The State Duma addressed the Constitutional Court with a request to clarify the terms of Boris Yeltsin's tenure as president. The draft appeal was prepared by deputies Elena Mizulina, Alexei Zakharov and Adrian Puzanovsky. An appeal to the Constitutional Court was required by the wording that the same person cannot hold the presidency for more than two consecutive terms.

Boris Yeltsin was first elected to a five-year presidential term on June 12, 1991, under the old Constitution of the RSFSR, which ceased to operate in 1993. The new Russian Constitution introduced a rule on limiting the powers of the head of state to two consecutive terms. The uncertainty with which the deputies turned to the Constitutional Court was whether it was necessary to count the time of Boris Yeltsin's rule from 1991 to 1995 when determining the possibility of re-election for a third time. Yeltsin himself said that he would not go to the 2000 elections, but the statements of his press secretary about the legitimacy of the very fact of participating in the elections cast doubt on the president's plans.

The essence of the decision

The Constitutional Court determined Boris Yeltsin's presidency from 1996 to 2000 as a second term, which barred him from running in the upcoming elections. Among the law enforcement decisions confirming this logic, the Constitutional Court cited the appointment by the Federation Council of elections for June 16, 1996 with unequivocal wording, implying that “the first constitutional term of office of the President of the Russian Federation has expired.” All the documents, according to the Constitutional Court, indicated that the incumbent president before the elections was considered “as a candidate for this position for a second term”: “These decisions were not questioned and were not disputed, including neither by himself nor by other candidates”, says the decision.

Dissenting opinion

A dissenting opinion on the case was expressed by Judge **Tamara Morshchakova**, who considered that the dispute over the terms of Boris Yeltsin should have been resolved not by the Constitutional Court, but by law

enforcers — the Central Election Commission, and in case of disagreement of the parties with its decision — the Supreme Court.

"*Consideration by the Constitutional Court of the issue raised by the State Duma before and instead of law enforcement officers who would have to resolve the indicated hypothetical situation, if it arose at all, is an interference in such a law enforcement process and is contrary to the idea of direct action of the Constitution of the Russian Federation*," the dissenting opinion says. According to Tamara Morshchakova, the Constitutional Court did not have sufficient grounds either to submit the request of the State Duma for consideration, or to deepen the assessment of these legal issues in the procedure of constitutional proceedings, and even more so to decide on its merits in the ruling on termination of the proceedings.

What happened next

In addition to banning Boris Yeltsin's participation in the 2000 elections, the decision of the Constitutional Court confirmed the possibility of the president being elected for more terms if they do not follow one another. Vladimir Putin, who in 2008 ceded the post of head of state to Dmitry Medvedev, was able to take advantage of this opportunity.

On March 10, 2020, State Duma deputy from "Edinaya Rossiya" Valentina Tereshkova proposed, after the adoption of amendments to the Constitution, to "zero out" the presidential terms and give the incumbent President Vladimir Putin the right, "like any citizen," to be elected again. The amendment caused a wide response and provoked many comparisons with the situation of Boris Yeltsin in 1998.

Pavel Krasheninnikov, one of the co-chairs of the working group on the preparation of amendments to the 2020 Constitution, the State Duma Committee on State Construction and Legislation, stated that such a comparison is incorrect, since in 1998 the Constitutional Court only indicated by its decision: there is no ambiguity in understanding that Boris Yeltsin holds his position second term in a row.

The "Yabloko" faction in the Constitutional Court was represented by Elena Mizulina, who said that consideration of the issue of presidential terms is "important as a precedent": "If we leave in the current Constitution the norm under which it is possible to stay president for more than two consecutive terms, we will get a dictatorship. And after the dictatorship, as world experience shows, a revolutionary situation follows." Almost 22 years later, her position has changed. "We have the strongest president, who is feared all over the world and reckoned with," Elena Mizulina said at a meeting of the Federation Council, supporting the proposal to "zero out" presidential terms in the spring of 2020.

The Constitutional Court, more than 20 years later, also found no common ground between the situations that developed with Boris Yeltsin and Vladimir Putin. Assessing the amendment to zero out presidential terms in 2020, the Constitutional Court clarified that the resolution of the issue of the maximum number of presidential terms is due to the balance of constitutional values, and the all-Russian vote for the amendments, which took place in the summer of 2020, should have given additional legitimacy to the process.

Can the bank itself change the deposit rate?

- **Decision:** Judgment of the Constitutional Court No. 4-P of February 23, 1999
- **Applicants:** O.Yu. Veselyashkina, A.Yu. Veselyashkin and N.P. Lazarenko
- **Contested act:** Art. 29 of the Federal Law "On banks and banking activities"
- **Result:** the contested norm **does not comply** with the Constitution

Plot

In February 1996, citizen O. Veselyashkina entered into a term bank deposit agreement with the Meshchansky branch of Sberbank of Russia, which provided for an interest rate on the deposit of 4.5 % per month. Due to the fact that since March 1996 the Savings Bank of Russia unilaterally lowered the rate, the

applicant filed a lawsuit against this bank with the Istrinsky District Court of the Moscow Region, the consideration of which, after the applicant's application to the RF Constitutional Court, was suspended.

In March 1997, O. Veselyashkina and A. Veselyashkin entered into a term bank deposit agreement "Moscow — 850 years" with a branch of the joint-stock bank "Inkombank", according to which the interest rate on the deposit was 31.2 % per annum. During the year, the bank unilaterally reduced the interest rate on the deposit twice. The Krasnogorsk District Court of the Moscow Region, where the depositors applied with a demand to recognize the terms of the agreement as invalid and recover the losses incurred, refused to satisfy the claims. The court referred to Part 2 of Art. 29 of the Federal Law "On banks and banking activities".

The same situation developed with N. Lazarenko. In February 1996, he entered into two term deposit agreements with the Sokolniki branch of the Savings Bank of Russia with an interest rate of 90 % per annum. The Bank during the term of the agreements repeatedly unilaterally reduced this rate. The Preobrazhenskiy Inter-Municipal Court of Moscow, to which the applicant applied, dismissed his claims similar to Veselashkin's, citing the same provision of law. The Judicial Collegium of the Moscow City Court upheld this decision.

In their complaints to the Constitutional Court, the applicants asked to verify the constitutionality of this norm of the federal law. In their opinion, its provision, which allows the bank, on the basis of an agreement, to unilaterally reduce interest rates on fixed-term deposits of citizens, infringes on their constitutional rights. The Constitutional Court joined the cases on these complaints in one proceeding.

The essence of the decision

In its decision, the Constitutional Court found that, in accordance with Part 2 of Art. 29 of the Law "On Banks and Banking Activities", a credit institution does not have the right to unilaterally change interest rates on loans, except as provided by federal law or an agreement with a client.

The Court recalled that by the time the Contested Norm came into force Part 1 of the Civil Code of the Russian Federation was already in force, in accordance with Art. 310 of which unilateral refusal to fulfill an obligation and unilateral change in its conditions (if this is not related to the implementation of entrepreneurial activity) are not allowed, except as provided by law. In addition, Art. 838 of the Civil Code of the Russian Federation, it was directly established that the amount of the interest rate under a term bank deposit agreement with a citizen cannot be unilaterally reduced by a bank, unless otherwise provided by law.

Meanwhile, in practice, in the presence of this conflict of norms, the banks continued to apply the disputed provision and interpreted it as not requiring additional specification. As a result, banks reduced rates on such deposits, which was not rejected by the courts either.

Having considered the case, the Constitutional Court recognized the norm of the law "On Banks and Banking Activity", which provides for an arbitrary reduction by banks of the interest rate on fixed-term deposits of citizens, **unconstitutional**. The Constitutional Court pointed out that the bank is not entitled to establish such a condition in the contract without defining in the federal law the grounds that give it such an opportunity.

What happened next

Almost a quarter of a century has passed since the adoption of this judgment, but the problem of consumer insecurity in relations with banks cannot be called completely resolved. Banking organizations still continue to include provisions in contracts on the possibility of unilaterally changing the conditions for the provision of their services, and consumers are forced to sign them — they have no tools to protect their rights, in addition to judicial ones.

Two years ago, the Supreme Court was again forced to prohibit unilateral changes in the terms of contracts that worsen the position of the depositor — this time it was about bonus conditions. The Supreme Court, referring to the Judgment of the Constitutional Court of 1999, emphasizes: "…a citizen is an

economically weak party and needs special protection of his rights, which entails the need to limit the freedom of contract for the other party, that is, for banks."

At the same time, the rule on the illegality of unilateral changes to the provisions of a standard contract, which the consumer does not have the possibility of making amendments to, already applies not only to deposits, but also to other banking services: for example, the conditions for providing premium customer service programs.

An example of this is the decision of the Supreme Court of 2021, in which the Supreme Court pointed out the inadmissibility of a unilateral change in the terms of the contract by a financial organization, even if the citizen agreed to this by signing the document. A detailed description of this case (about the changed conditions for banks to provide access to business lounges at airports) was published by "Advokatskaya Gazeta".

In a commentary for "AG", Dmitry Boholdin, a lawyer at Borodin & Partners, noted that the courts in Russia still continue to form a practice on the issue of the impossibility for one party, professionally engaged in entrepreneurial activities, to unilaterally waive its obligations when concluding an agreement with a citizen who is not an entrepreneur.

2000–2016: flagship decisions in criminal justice and the first big controversy about “foreign agents”

Who is a suspect, or “A lawyer for a witness”

- **Decision:** Judgment of the Constitutional Court No. 11-P of June 27, 2000
- **Applicant:** V.I. Maslov
- **Contested acts:** Art. 47 and part 2 of Art. 51 of the Code of Criminal Procedure of the RSFSR
- **Result:** Art. 47 of the Code of Criminal Procedure of the RSFSR is **contrary** to the Constitution, and part 2 of Art. 51 — **not**

Plot

The subject of consideration in the Constitutional Court was the complaint of V.I. Maslov to the violation of his constitutional right to be protected by Art. 47 and 51 of the Code of Criminal Procedure of the RSFSR.

As follows from the complaint, on October 2, 1997, during the investigation of a criminal case on extortion, Maslov's house was searched. After him, the citizen was forcibly taken to the regional department for combating organized crime, where he was held for more than 16 hours. During this time, he was identified, interrogated as a witness and confronted.

In response to Maslov's request to provide him with a lawyer, the investigator explained that in accordance with Part 1 of Art. 47 of the Code of Criminal Procedure of the RSFSR, the assistance of a defense counsel is provided only to the accused (from the moment the charge is brought) and the suspect (from the moment the protocol of detention is announced to him or the decision to apply a measure of restraint to him in the form of detention). And since Maslov was formally a witness at that time, they could not satisfy his request. The report on the detention as a suspect V.I. Maslov was presented only after the investigative actions.

After Maslov was charged, his lawyer petitioned to get acquainted with the protocols of investigative actions, but he was refused. According to the investigator, the provisions of Part 2 of Art. 51 of the Code of Criminal Procedure of the RSFSR (on the rights and obligations of a defense counsel) do not provide for the right of a defense counsel to familiarize himself with the protocols of investigative actions carried out with his principal until the moment he is recognized as a suspect until the end of the investigation. The lawyer was able to see these documents only after the end of the investigation.

Maslov repeatedly tried to appeal against the actions of the investigator through the prosecutor's office and the court, but law enforcement agencies did not see any violations in them. Only after consideration by the court of cassation were their demands partially satisfied — the refusal to provide the defense counsel with the protocols of investigative actions and the opportunity to make extracts from the procedural documents was recognized as illegal.

Maslov considered that irreparable damage had been caused to his constitutional rights, since they were not implemented in a timely manner at an important stage of the criminal process for the defense. He asked the Constitutional Court to check the provisions of the Criminal Procedure Code applied in his case for compliance with Art. 45 (on the right to defend one's rights in any way not prohibited by law), 48 (on the right to qualified legal assistance) and 55 (on the inadmissibility of restrictions on rights and freedoms) of the Constitution.

The essence of the decision

Referring to the Constitution and the norms of international law, the Constitutional Court pointed out that the right to the assistance of a lawyer cannot be limited by federal law, therefore, in relation to its provision, the concepts of “detained”, “accused”, “charged” should be interpreted in their constitutional and legal, and not in the narrower sense given to them by the criminal procedure law.

The court explained that in order to exercise the constitutional right to defense, it is necessary to take into account not only the formal procedural, but also the actual situation of the person against whom the criminal prosecution is carried out.

Suspicion in a criminal case is not equivalent to the formalist concept of “suspect” enshrined in the Code of Criminal Procedure, it should be interpreted much broader. The Constitutional Court identified three categories of “suspect” — in everyday, procedural and factual senses. The latter means that the suspect is the one in relation to whom there is an objective suspicion, the one against whom the accusatory activity of the investigation is carried out, expressed in certain actions.

In the opinion of the Constitutional Court, in cases of such “suspicion”, a citizen — regardless of his formal procedural status — should be immediately given the opportunity to seek help from a lawyer. This will allow him to get a proper idea of his rights and obligations, of the accusation brought against him and, consequently, to effectively defend himself, and to the investigation — to guarantee the admissibility of the evidence received.

Thus, the Constitutional Court declared the provisions of Art. 47 of the Code of Criminal Procedure of the RSFSR **inconsistent** with the Constitution, since they restrict the right of every citizen to use the assistance of a lawyer in all cases where his rights and freedoms are significantly affected by actions related to criminal prosecution.

The provisions of Part 2 of Art. 51 of the Code of Criminal Procedure of the RSFSR were recognized as **not contradicting** the Constitution, since they do not restrict the right of the defense counsel to get acquainted with the protocols of investigative actions taken before the recognition of his client as a suspect (that is, during the investigation, and not only after its completion). The same applied to the right of the defense counsel to get acquainted with the procedural documents that were presented or should be presented to the suspect and the accused, as well as to write out from the materials with which the defense counsel was familiarized, any information and in any volume. Restrictions on these rights “have no reasonable grounds” and “cannot be justified by the interests of the investigation or other constitutionally significant goals that allow proportionate restrictions on rights and freedoms.”

Why has this decision been important?

After this Judgment, any person in respect of whom actions are being taken to identify the facts and circumstances incriminating him, received the right to demand the participation of his lawyer, regardless of his procedural status and the moment of investigation. If the Code of Criminal Procedure of the RSFSR recognized as suspects only those against whom a preventive measure was applied or detention was carried out, then the later introduced Criminal Procedure Code of the Russian Federation significantly changed the concept of a suspect and expanded the circle of persons entitled to protection.

“In 2000, the Constitutional Court of the Russian Federation formulated the “Maslov rule”: a person against whom actions are carried out under the Code of Criminal Procedure has the right to a lawyer,” says lawyer **Maxim Olenichev**. “And this right does not depend on the formal decisions of the bodies of preliminary investigation and the issuance of decisions by them, for example, on the involvement as a suspect and an accused. The right to use the legal assistance of a lawyer arises for a person from the moment of a real, and not a formal (documentary) restriction of a person's freedom by the criminal prosecution authorities. In practice in Russia, in any case of collision with the actions of the criminal authorities, this rule guarantees everyone — from the moment any procedural actions are carried out against him and with his participation — the opportunity to seek help from a lawyer.

A year after this decision of the Constitutional Court, the “Maslov rule”, otherwise called “lawyer for a witness”, was fully reproduced in the new Code of Criminal Procedure of the Russian Federation. It is no longer possible to imagine that anyone would question the authority of a lawyer to assist a detainee, a witness, a person who is being interrogated or searched, from the moment these measures are applied. This activity of a lawyer, both legislatively and practically, forms the foundation of defense in the course of a criminal investigation.

Violations of the “Maslov rule”, which we still often observe — when lawyers are not allowed to be searched or to the police department for far-fetched reasons — already cause not only understandable indignation among lawyers, but also the same assessment in the public mind, where ideas about proper fair justice standards. And the courts often recognize just such actions of law enforcement agencies as illegal. “Maslov's rule” has strengthened the guarantees of protection against arbitrariness — it works.”

Search of a lawyer: background, position of the Constitutional Court and unresolved problems

- **Decision:** Decision of the Constitutional Court No. 439-O of November 8, 2005
- **Applicants:** lawyers of the law firm “Yustina”
- **Contested acts:** Art. 7, 29, 182 and 183 of the Code of Criminal Procedure of the Russian Federation
- **Result:** searches at law firms require a separate court decision

Plot

The lawyers of the “Yustina” law firm appealed to the Constitutional Court because of the search that took place at their law firm on December 29, 2004. The basis for the investigative actions was the decision of the investigator, who believed that the law office was engaged in the production and storage of forged documents. Some papers were seized.

The lawyers considered the incident to be lawlessness and appealed to the Dorogomilovsky District Court of Moscow with a complaint in which they referred to Art. 8 of the Law “On Advocacy and the Bar in the Russian Federation”, which states that it is possible to search their office premises only on the basis of a court decision. On the second attempt, the Dorogomilovsky District Court determined that since the investigative actions were not carried out in the case against the lawyers, they were lawful.

In a complaint to the Constitutional Court, the applicants insisted that a search in their office could only be carried out on the basis of a court decision, and the disputed articles allow for a different interpretation and do not contain a requirement to obtain a court decision to search and seize premises used for advocacy.

Such an approach, the lawyers insisted, violates their rights to privacy, the rights of a lawyer to engage in their chosen activity and the right of everyone to receive qualified legal assistance. Art. 7 of the Code of Criminal Procedure has become the basis for non-application of the norms of the Law on Advocacy — the second paragraph of the Code of Criminal Procedure states that if a federal law or other legal act does not comply with it, the court makes a decision in accordance with the Code of Criminal Procedure.

The essence of the decision

The Constitutional Court agreed with the lawyers' position, recalling that the priority of the Code of Criminal Procedure over other laws is not unconditional.

For example, this priority does not apply when other laws are adopted later or are specialized. At the same time, in the event of a conflict between various legislative acts, it is necessary to apply the law that provides for a greater scope of guarantees of human and civil rights and freedoms, the Constitutional Court pointed out. The Constitutional Court confirmed that the contested articles do not provide for the possibility of conducting a search in the office of a lawyer or a lawyer's education without a special court decision to that effect.

Searches at lawyers’ premises — What happened next

By this decision, the Constitutional Court confirmed the special status of the relationship between the client and the defense counsel, noting the importance of respecting the attorney-client privilege. The decision of

the Constitutional Court has become one of the fundamental ones for protecting the interests of lawyers in the future. "*The court definitely confirmed the importance of ensuring attorney-client privilege by all participants in legal proceedings and law enforcement activities,*" said **Evgeny Semenyako**, president of the Federal Chamber of Advocates of the Russian Federation.

"*With this decision, it seems to me, we to some extent prevented the rampant illegal actions of law enforcement officers in terms of attorney-client privilege*," **Viktor Burobin**, president of the "Yustina" law firm, later said.

10 years after the judgment was made, the Constitutional Court, on the complaint of lawyers from the Novosibirsk Bar Association, recognized the conduct of investigative actions against defense lawyers, in particular, the seizure of their correspondence with clients, as consistent with the Constitution. At the same time, the Constitutional Court reiterated the obligation of a court decision to conduct a search, and also established a number of rules for conducting investigative actions and limited the amount of lawyer information that can be studied, seized and recorded using technical means.

At the same time, the Constitutional Court pointed to the need to formulate a more precise definition of attorney-client privilege. The Constitutional Court considered that, in exceptional cases, interference in it by the authorities is allowed. Such cases include reasonable suspicions of abuse by a lawyer or a principal, as well as, if necessary, protecting the foundations of the constitutional order, morality, health, rights and legitimate interests of others. Because of this, not all information that a lawyer and his principal would like to make confidential is privileged.

As a result, in 2017, legislators introduced provisions into the Code of Criminal Procedure establishing a special procedure for conducting searches, inspections and seizures of lawyers. Now, in addition to an initiated criminal case or a court decision, a member of the council of the region's bar association must be present during the search — he is entrusted with the duty to ensure the inviolability of objects and information constituting attorney-client privilege.

A year later, the Constitutional Court again returned to the issue of search activities at lawyers' premises — after all, from the moment the decision was made in 2005 to this day, the problem of protecting the rights of lawyers in the face of interference by the investigating authorities remains quite acute. Then the Constitutional Court issued a refusal ruling on a complaint about a search of a lawyer's house under the guise of examining the premises, saying that the problem was not in the law — which allows the replacement of an investigative action with an operational measure — but in law enforcement on the ground.

The Constitutional Court did not agree with the applicants, stating that the legislative requirement to conduct operational-search measures and investigative actions against a lawyer is aimed at "ensuring the implementation of the constitutional right of citizens to receive qualified legal assistance."

Lawyers noted that not in all cases it is possible to distinguish between a search as an investigative action and an inspection of premises as an ORM. And this problem has not yet been resolved either in the law or in the jurisprudence of the Constitutional Court and the Supreme Court. Sometimes the nature and degree of restriction of the protected constitutional rights and freedoms of citizens are too similar in them, and there is actually no border that makes it possible to distinguish a search from an examination or examination. This gives rise to abuses that make it possible to replace a search, which requires an initiated case and a court order, with an inspection or examination — formally it is much easier to conduct them, but there is no real difference between them.

Is the death penalty possible after the introduction of the jury?

- **Decision:** Decision of the Constitutional Court No. 1344-O-R of November 19, 2009
- **Applicant:** Supreme Court of the Russian Federation
- **Clarified provision:** paragraph 5 of the Judgment of the Constitutional Court No. 3-P of February 2, 1999
- **Result:** the death penalty cannot be applied

Plot

The Plenum of the Supreme Court turned to the Constitutional Court with a request to clarify the decision of the Constitutional Court, issued in 1999. That document forbade the imposition of death sentences before the widespread trial of such cases by a jury. In the ten years that have passed since then, jury trials have begun to work in all constituent entities of the Russian Federation, with the exception of the Chechen Republic (they appeared there after 2010). Due to the fact that the issue of the possibility of imposing the death penalty in Russia has again become relevant, the Supreme Court asked the Constitutional Court to provide additional clarifications.

The Plenum of the Supreme Court pointed to the inconsistency between Russian and international law. On April 16, 1997, Russia signed Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms regarding the abolition of the death penalty in peacetime and, although the State Duma never ratified it, the use of the death penalty in Russia from that moment was prohibited due to the action of the Vienna convention, which presupposes the fulfillment of the terms of the treaty until its ratification.

The essence of the decision

The Constitutional Court found it impossible to use the death penalty despite the creation of jury trials throughout the country. The definition states that within the framework of the "constitutional and legal regime" that has developed as a result of a long moratorium, an "irreversible process" is taking place aimed at the abolition of the death penalty, and the introduction of a jury trial does not open the possibility of returning to it.

"In the Russian Federation, there is a comprehensive moratorium on the use of the death penalty, which specifies the guarantees of the right to life enshrined in the Constitution of the Russian Federation, which, in the sense of its constituent legal acts, was originally intended to be short-term. At the same time, this legal regulation has been in force for more than 10 years," the document says. "As a result of such a long moratorium on the use of the death penalty… stable guarantees of the right not to be subjected to the death penalty have been formed and a legitimate constitutional legal regime has been formed, within which, taking into account the international legal trend and the obligations undertaken by the Russian Federation, — an irreversible process is underway aimed at the abolition of the death penalty as an exceptional measure of punishment, which is of a temporary nature."

Dissenting opinions

Yuri Rudkin did not agree with most of the judges. In a dissenting opinion, he pointed out that now the Constitutional Court, according to the law on the Constitutional Court, could explain the 1999 decision only "within the scope of the subject of this decision and only on those issues requiring additional interpretation that were the subject of consideration in the court session." 10 years ago, according to the judge, the subject of consideration by the Constitutional Court was not the question of the abolition of the death penalty in general. The judgment concerned only "ensuring citizens an equal right to have their cases examined by a jury throughout the territory of the Russian Federation." Because of this, in 2009, the Constitutional Court, according to Yuri Rudkin, had to recognize that a ten-year-old ruling provided for the possibility of imposing the death penalty in Russia from the moment jury trials were introduced in all regions. The issue of Russia's international obligations also should not have been discussed, since in 1999 there was no talk of it.

What happened next

Some time later, the Supreme Court filed a new petition with the Constitutional Court, in which it asked to clarify another ambiguous point. In the motivational part of the ruling of the Constitutional Court, it was stated that "in Russia, since April 16, 1997, the death penalty cannot be applied, that is, the death penalty should neither be imposed nor executed." After that, the courts of general jurisdiction began to receive petitions from convicts to review the death sentences imposed after April 16, 1997 and replaced by life imprisonment, because of which the Supreme Court again asked to clarify the controversial provision. The Constitutional Court wrote that the legal position formulated by him a year ago "is turned to the future" and does not give rise to any legal consequences in relation to convicts whose death penalty has been replaced by life imprisonment.

These legal provisions continue to operate, although calls for the return of the death penalty have firmly entered the political and informational agenda — however, the official position insists on the absolute impossibility of returning the heaviest criminal punishment, including due to the positions repeatedly expressed by the Constitutional Court.

Too "luxurious" housing, but the only and inviolable

- **Decision:** Judgment of the Constitutional Court No. 11-P of May 14, 2012
- **Applicants:** F. Gumerova and Yu. Shikunov
- **Contested act:** Art. 446 of the Civil Procedure Code of the Russian Federation
- **Result:** the norm is recognized as **not contrary** to the Constitution

Plot

Faniya Gumerova, a resident of Ufa, and Yury Shikunov, a resident of Moscow, filed a complaint with the Constitutional Court. They found themselves in a similar situation due to the fact that they could not recover money from debtors — owners of expensive real estate.

Faniya Gumerova for three years could not get 3 million rubles from a pensioner — 2 thousand rubles were withheld from his pension as a debt, despite the fact that he was the owner of a house with an area of 332 square meters and cost about 10 million rubles. Yuri Shikunov could not take away from the debtor a quarter of an apartment of 20 square meters belonging to her on account of a debt of 70 thousand dollars.

The applicants argued that foreclosure on part of the debtor's living quarters did not threaten his rights and legitimate interests, the protection of which required restriction of the rights and freedoms of other persons.

The essence of the decision

The Constitutional Court recognized the norm as **corresponding** to the Constitution, but agreed with the position of the applicants: "*The extension of property immunity to residential premises, the size of which exceeds the average, and their value is sufficient to satisfy the requirements of the creditor, violates the balance of legitimate interests of participants in enforcement proceedings,*" the Constitutional Court decided. According to the judges, immunity to such property unreasonably and disproportionately restricts the creditor's rights.

The Constitutional Court demanded that the legislators provide for a procedure for foreclosing a dwelling or part of it by the court if it establishes that the property clearly exceeds legal standards, and the income of the debtor citizen is disproportionate to his obligations. At the same time, the State Duma had to maintain housing guarantees for the debtor and his family members.

Dissenting opinions

Dissenting opinions on the case were expressed by judges Gennady Zhilin and Nikolai Bondar.

Nikolai Bondar did not agree with the recognition of the controversial article of the relevant Constitution. He considered this illogical, since the Constitutional Court "definitely pointed out the existing defects in legal regulation" and turned to the legislators to improve the norm. "*The key issue — the protection of the rights of creditors (collectors) who claim to receive the amount of debt at the expense of residential premises belonging to citizens-debtors, which, by their characteristics, significantly exceed the minimum dimensions necessary to meet housing needs, is postponed indefinitely, until the payment corresponding changes in the civil procedural legislation,"* Nikolai Bondar wrote, noting the "prolonged inaction of the legislators to solve the problem," which the Constitutional Court pointed out to the legislator back in 2003.

Gennady Zhilin agreed with Nikolai Bondar. In his opinion, the Constitutional Court should not have recognized the norm as constitutional, only to provide the debtor and his family members with normal living conditions and guarantees of their socio-economic rights. Nikolai Bondar considered that by refraining "*from recognizing the challenged legal provision in the relevant part as unconstitutional, the Constitutional Court of the Russian Federation did not ensure the restoration of the violated rights of the applicants*."

Consequences

For nine years, the legislators have not established the criteria for the luxury of housing, which the Constitutional Court wrote about in its judgment. Moreover, during this time, the judicial practice that takes the side of the debtors has not changed. Thus, in 2020, the Supreme Court of the Russian Federation denied creditors the right to forcibly replace a bankrupt citizen's only apartment with a smaller apartment, citing the fact that the law does not allow this.

Such inaction forced the Constitutional Court to take more drastic measures — in the spring of 2021, when considering the complaint of Ivan Revkov, the judges directly allowed the restriction of executive immunity, which protects the only housing of the debtor citizen from recovery.

"*In addition to many years of unacceptable legislative inaction, this ongoing risk of harm to constitutionally significant values is aggravated by the non-execution of an act of constitutional justice*," the Constitutional Court noted. In the decision, the Court independently determined the criteria for luxury housing and instructed the courts of general jurisdiction to be guided by these rules until changes are made to the law.

The removal of protection from the only housing is possible if the courts establish that it was acquired with abuse. The time of awarding the debt, initiating enforcement proceedings and notifying the debtor of these events, the terms of transactions for the alienation of other property for the acquisition of housing protected by immunity may also be taken into account.

How did the tightening of protest legislation begin?

- **Decision:** Judgment of the Constitutional Court No. 4-P of February 14, 2013
- **Applicants:** E.V. Savenko (Limonov) and a group of deputies of the State Duma of the Federal Assembly of the Russian Federation
- **Contested act:** Federal Law of June 8, 2012 No. 65-FZ "On Amending the Code of the Russian Federation on Administrative Offenses and the Federal Law "On Meetings, Rallies, Demonstrations, Marches and Pickets""
- **Result:** subparagraph "g" of paragraph 1 of Art. 2 and subparagraph "a" of paragraph 4 of Art. 2 contested acts **do not comply** with the Constitution, and the remaining contested provisions are **constitutional**

Plot

A group of opposition deputies and the leader of the unregistered "Other Russia" party, Eduard Limonov, appealed to the Constitutional Court with a request to check for compliance with the Constitution of the law "On meetings, rallies, demonstrations, processions and picketing", which was amended before the "March of Millions".

Among the innovations are an increase in maximum fines, the ability of the authorities to determine places for holding public actions. For a two-time violation of the law, citizens were subject to a one-year ban on organizing rallies.

The essence of the decision

The Constitutional Court recognized the norms as partially inconsistent with the Constitution and recommended that they be revised: to reduce the minimum amount of fines, increase the number of so to call "hyde parks" and mitigate liability for organizers. In addition, the Constitutional Court decided to cancel the punishment in the form of compulsory labor in the case when, as a result of a violation of administrative law, no harm was caused to someone's health and no damage was caused to property.

The court also established that the amendments to the challenged law were adopted with deviations from the requirements of the State Duma regulations. However, the identified violations, according to the Constitutional Court, did not affect the constitutionality of the adopted law.

At the same time, most of the applicants' claims were still rejected by the Constitutional Court. For example, the Court did not examine the constitutionality of filing notices of meetings: the applicants were convinced that the notices led to the permissive nature of a public event, and that it was contrary to the Constitution. In addition, the Constitutional Court did not satisfy Eduard Limonov's complaint about the norm of the law, according to which citizens who twice violated the rules for holding rallies are subject to a one-year ban on organizing rallies.

Dissenting opinions

Dissenting opinions on the case were expressed by judges Vladimir Yaroslavtsev and Yuri Danilov.

Yaroslavtsev, unlike the majority of judges, wrote that the law cannot be considered constitutional on account of its adoption procedure.

It should be recalled that the contested act was adopted in the State Duma in record time — 26 days. At the same time, the deputies did not receive feedback from the regional parliaments. "Bringing the constitutional right of citizens to freedom of assembly on the sacrificial altar of the State Duma of the Russian Federation for the sake of momentary desires to adopt the law in the "fast" manner, of course, does not speak well of the State Duma of the Russian Federation and does not add to its authority, because, by definition, it should be a model of compliance all norms of the legislative process," the judge reminded.

Judge **Danilov** also agreed with him.

“Violations during the adoption of the contested law were (taking into account the number of amendments) massive: during the discussion of the amendments in the second reading, the provisions of the Rules, which imperatively establish the right for their authors to a three-minute speech, changed twice, limiting the time for the speech of the authors of the amendments, first to one minute, and then up to 30 seconds. Truly, when you can't win by the rules, gentlemen change the rules. Democracy is above all a procedure,” the judge wrote. “It is only striking that the noted large-scale violations of the legislative procedure were recognized by the Court as established, but considered insufficient for applying measures of constitutional responsibility to the State Duma in the form of disqualification of the Law adopted by it.”

What happened next

The history of tightening protest legislation in Russia in the early 2010s was just beginning. Since the time that has passed since the decision of the Constitutional Court on Limonov's complaint, the increase in administrative penalties, the introduction of new criminal offenses and the growth of the text of the law prohibiting or regulating the holding of mass events have become one of the main agendas of legislative work.

At the end of 2021, “Mediazona” calculated that the Code of Administrative Offenses of the Russian Federation has almost quadrupled in 20 years since its adoption, and Art. 20.2 alone, which has been changing on a regular basis since 2012, has increased 8 times. At the same time, the terms for adopting laws that introduce tougher sanctions changes are significantly reduced. The duration of arrests and the amount of fines imposed for protest violations continue to grow.

If I've been defamed

- **Decision:** Judgment of the Constitutional Court No. 18-P of July 9, 2013
- **Applicant:** E.V. Krylov
- **Contested acts:** paragraphs 1, 5, 6 of Art. 152 of the Civil Code of the Russian Federation
- **Result:** interrelated contested acts **do not comply** with the Constitution

Plot

An ex-official from Surgut, Yevgeny Krylov, turned to the Constitutional Court with a request to check the norms of the Civil Code of the Russian Federation for compliance with the provisions of the Constitution, which guarantee his right to protect the dignity of the individual.

On one of the Internet resources, materials were published depicting Yevgeny Krylov, on which, while relaxing in a restaurant, he turned out to be a participant in a conflict with security and police officers. Anonymous Internet forum users discussed these materials using negative and offensive comments.

Yevgeny Krylov tried to get the “defamatory information and offensive comments” removed from the courts. He also demanded that the administrators of the resource compensate him for moral damage. The Surgut District Court recognized the comments as defamatory, but ruled that the authors of the reviews, not the forum administration, should be held responsible for the insults. Higher instances, up to the Supreme Court, upheld the original decision.

Evgeny Krylov considered that the disputed provisions of the Civil Code of the Russian Federation — in their practical interpretation and application by the courts — do not allow him to restore his violated rights. Thus, in his opinion, the constitutional provisions on the protection of the dignity of the individual and its protection become ineffective.

The essence of the decision

The Court recalled that the Constitution of the Russian Federation proclaims human dignity as a universally recognized and absolute value. Based on this, according to the court, the implementation of the right to

freedom of speech imposes appropriate duties and responsibilities, including for the purpose of respecting the rights and reputation of others. The Court emphasized that these fundamental principles also apply to online relationships. Moreover, the Constitution, the Constitutional Court drew the attention of, guarantees every person the right to judicial protection and the possibility of restoring violated rights and freedoms.

The Constitutional Court established that the contested acts do not directly require the deletion of discrediting and untrue information recognized by the court from sites that are not registered as mass media. They also do not provide for liability for failure to comply with the requirements for the removal of such information. As a result, the practice of applying these norms does not provide sufficient guarantees for the protection of the constitutional rights of a person in respect of whom defamatory information is widespread, and, accordingly, **conflicts** with the Constitution.

In its decision, the Constitutional Court ruled that the owners of sites that are not mass media should be responsible for user comments and remove them by court order.

And what does this mean for practice?

“Finding a balance between freedom of expression, the right to freedom of information and the right to a good name and reputation is not so easy if you approach the search for a balance formally or do not try to do it at all, as, unfortunately, often happens in practice,” comments this decision of the Constitutional Court Director of the Center for the Protection of Media Rights[2] **Galina Arapova**[3] of the Constitutional Court. “These fundamental rights come into conflict every time defamatory information is publicly disseminated, the authenticity of which is called into question.

It is then that the court must, within the framework of defamation cases, resolve this conflict and establish a proper balance between these two equivalent constitutional rights. The European Court of Human Rights constantly speaks about the need to find a balance in its practice, this was expressed in 2005 by the Plenum of the Supreme Court of the Russian Federation in its Judgment on cases of protection of honor, dignity and business reputation. A qualitative example of the search for such a balance and proper motivation was shown to us in this decision by the Constitutional Court of Russia.

The case concerning the removal of defamatory information from a website on the Internet shows how precise any restriction of the right to freedom of dissemination of information must be and how exactly one should look for the right tool to restore the violated right to reputation in situations where the author is unknown and the distributor is not registered media, playing only a technical role in providing a platform for online discussion.

The Constitutional Court rightly pointed out that an online intermediary cannot be held responsible for the content distributed on its site, of which it is not the author, but at the same time it will be fair if it executes a court decision to remove defamatory information, if it is recognized as such and established the fact that it is unreliable. This is an important balance between the inadmissibility of unreasonably restricting the right to disseminate information and the importance of ensuring that the right to a person's reputation is adequately protected when the right to freedom of speech and the right to disseminate information is clearly abused.

Conflicts related to freedom of speech and freedom of dissemination of information in the modern world — where the Internet has become one of the main channels for the exchange of information, and the platforms of registered media have already lost their monopoly position in the information space — require new approaches and understanding on the part of the judiciary of those mechanisms that used to disseminate information on the Internet.

The online world is very diverse and the players play different roles in it. On the one hand, there are registered online media, private authors who speak anonymously on forums and social networks. On the

[2] Included in the list of foreign agents.

[3] Included in the list of foreign agents.

other hand, Internet service providers and domain name administrators, which provide only technical Internet services (such as providing access or searching, transmitting or caching information). The latter should not be held responsible for content created by others that has been distributed through these services. Obviously, the degree of responsibility of all these players for the distributed content, even if it violates someone's right to reputation and good name, should be different.

The Constitutional Court managed to demonstrate to law enforcers the logic of finding a balance between rights and choosing the right legal instrument to restore a violated right. The matter remains small: that in numerous litigations on the removal of information from Internet sites, the courts of the Russian Federation apply this logic, as well as international standards, which are referred to by the Constitutional Court in its Judgment.

But, unfortunately, in practice, this is still very sad. One can only hope that in cases where the Constitutional Court manages to offer law enforcers high-quality legal tools for applying national legislation and international principles, when the right words are found and a wise approach to finding a legal balance is demonstrated, this will not remain dead weight in legal databases, but will be a practical tool for the protection of human rights."

How convicts and HIV-positive people got the right to adopt children

- **Decisions** : Judgment of the Constitutional Court No. 6-P of February 25, 2016; Judgment of the Constitutional Court No. 25-P of June 20, 2018
- **Applicants:** S.A. Anikeev; family S.
- **Contested act:** Art. 127 of the Family Code of the Russian Federation
- **Result:** the contested act in both cases partially **contradicts** the Constitution

Plot

In 2014, Sergey Anikeev, a resident of the Arkhangelsk region, applied to the Constitutional Court. In 2009, a criminal case was initiated against the man for intentionally causing moderate bodily harm, but later the case was dismissed due to the reconciliation of the parties. On this basis, in 2012, the courts refused Anikeev to adopt a two-year-old stepson, whom he and his wife raised together. The couple also already had a child together. At the same time, the boy's biological father agreed to the adoption, stating that he did not want to be involved in his upbringing.

The version of the Family Code that was in force at that time forbade people convicted of intentional acts against life and health of any severity to adopt or take care of children. The same restrictions applied to those who were or are being prosecuted. Such rules were adopted in 2010 as part of a child protection project, and many lawyers then did not approve of the innovation.

"Judicial practice knows many cases of failed attempts to adopt a child by a person with a criminal record, when the interests of the family were violated. For example, if a husband was a suspect in a criminal case for causing damage to health of moderate severity, the case was closed with the consent of the victim, but then he could not legally become the father of his wife's child by remarrying," wrote the "Yuridicheskiy Vestnik". "Sometimes the uncle was not given orphaned nephews due to the fact that many years ago he was involved in a fight. As a result, kids who could have grown up in a comfortable family environment were placed in a boarding school."

It was this norm that the Investigative Committee of the Russian Federation Anikeev wanted to be reviewed. The applicant believed that the norm has established an indefinite and unconditional ban on adoption, "while excluding the possibility of taking into account the identity of the potential adopter and the factual circumstances that are essential to the case".

The essence of the decision

The CC noted that, according to the UN Convention, the child "for the full and harmonious development of his personality" needs to grow up "in a family environment, in an atmosphere of happiness, love and understanding." The earlier United Nations Declaration of the Rights of the Child and the Declaration on Social and Legal Principles Concerning the Protection and Welfare of Children state that "the need for love and the right to security and constant care" should be the primary consideration in all matters relating to the transfer of a child for caring for him not by his own parents.

"The possibility of transferring a child for upbringing to a family, or, if the child is already being raised in a family, of legal registration of the de facto established, meaningfully revealing the concept of the family within the meaning of the Constitution of the Russian Federation, is consistent with the general legal principle of humanism, the constitutional guarantees of the family," written in the decision of the Constitutional Court. At the same time, the court clarifies that the legislator has the right to prohibit adoption by citizens, "whose behavior and moral qualities may pose a threat to the health of the child and the formation of his personality."

The establishment of proportionate restrictions on the right to adopt a child meets the international obligations of the Russian Federation and is consistent with Russian legislation, emphasizes the Constitutional Court. Thus, the introduction of a ban on the adoption of children by persons indicated in the challenged legal provision aims to prevent the possible negative impact of these people on the life, physical and mental health of children. Since "at the present stage of development of society it is impossible to guarantee the proper correction of persons who have committed a crime in such a way as to exclude the possibility of relapse", the legislator may restrict their right to adopt.

At the same time, crimes of small and medium gravity are included in the number of crimes to which this prohibition is associated. It is assumed that such persons will be denied adoption of a child in any case: regardless of any circumstances, including the statute of limitations, the form of guilt, as well as personality characteristics. The CC came to the conclusion that in the event of termination of criminal prosecution on non-rehabilitating grounds, the question of whether a person poses a danger to minors remains unclear. Also, the contested act, among other things, does not take into account the specifics of the termination of criminal prosecution in cases of private prosecution for crimes that do not pose a significant public danger.

Based on this, the Constitutional Court recognized subparagraph 10 of paragraph 1 of Art. 127 of the Family Code of the Russian Federation as inconsistent with the Russian Constitution and ordered the law to be clarified. The Constitutional Court believed that an unconditional ban on adoption should be applied only if a person has committed a grave or especially grave crime, or a crime against sexual inviolability and sexual freedom of a person, regardless of the severity.

In all other cases, until changes are made to the current legal regulation, the court does not have the right to formally refuse to adopt people who have been prosecuted or convicted. At the same time, in the course of considering the issue on the merits, the court is obliged to assess whether the child is endangered by adoption by a specific person, the Constitutional Court stressed.

What happened next. The case of the family S.

Six months after the decision of the Constitutional Court, the Government Commission on Legislative Activities approved the draft law submitted by the Ministry of Education and Science on clarifying the categories of persons in respect of which the prohibition is established to be adoptive parents or guardians.

In March 2015, the State Duma adopted this bill. And a month later, President Vladimir Putin signed the amendments, thereby officially allowing the adoption of children by former prisoners convicted of minor or moderate crimes.

In 2018, the Constitutional Court will rely on the theses of this judgment already when considering the complaint of a married couple from the Moscow region, who decided to adopt a three-year-old nephew who lived with them from birth. However, the court refused them, explaining that the potential adoptive mother

suffers from a “disease that prevents adoption.” While hospitalized due to a miscarriage in 2012, she was infected with HIV infection and hepatitis C. In May 2017, the court of appeal upheld this decision.

The spouses asked the Constitutional Court to check the constitutionality of subparagraph 6 of paragraph 1 of Art. 127 of the Family Code of the Russian Federation and paragraph 2 of the List of diseases in the presence of which a person cannot adopt (adopt) a child.

“*The complaint stated that HIV infection was not transmitted by household means, and that neither the husband had contracted HIV infection for five years, nor the child for two and a half years. The spouses also drew attention to the high effectiveness of modern therapy prescribed for HIV-infected people, from which they conclude that the restrictions on adoption for this narrow group of people are based on an imaginary threat***,**” “Interfax” wrote.

The CC noted that “the legislators have the right to exercise some caution” when regulating such issues: the established restriction on adoption for persons with HIV infection or hepatitis C is aimed at not exposing the health of children to excessive risk, and therefore is not a violation.

At the same time, the possibility of adoption, especially if the child is already brought up in this family, is consistent with the general legal principle of humanism and constitutional guarantees. The contested acts are considered in judicial practice as implying refusal to adopt a child with formal confirmation of only the fact that a potential parent has HIV infection or hepatitis C. This excludes the possibility of taking into account all circumstances worthy of attention: for example, as in the case of the applicants that adoption allows only legal registration of the existing relationship between the parent and the child, without increasing the risks to the health of the latter.

As a result, this time too the Constitutional Court recognized the contested norms as inconsistent with the Constitution of the Russian Federation, to the extent that these provisions serve in judicial practice as grounds for refusing to adopt a child, if the person infected with HIV or hepatitis C virus, if they, due to already established family relations live with this person. The Constitutional Court decided to reconsider the case of the family. A case similar to this happened at the same time in Krasnoyarsk — then an HIV-positive grandmother was not allowed to take custody of her grandson, but the current decision of the Constitutional Court resolved this injustice.

Pavel Chikov, a lawyer who represented the family, called the ruling “a major step towards reducing discrimination.” “The Constitutional Court decided to make a small concession, essentially allowing adoption only for children who actually live in families of people living with HIV and/or HCV for a long time, if this is in the interests of the child. The Constitutional Court did not have enough courage to allow such people to adopt children from orphanages,” Chikov said in a conversation with “RBC”.

Despite the fact that the possibility of adoption by HIV-infected Russians of children was discussed in the Ministry of Health for a long time, the matter moved forward only after the decision of the Constitutional Court — in the fall of 2018 it became known that the government had begun developing a bill amending Art. 127 of the Family Code of the Russian Federation.

In February 2019, the State Duma Committee on Health Protection recommended the adoption in the first reading of a bill allowing people with HIV, hepatitis C and other diseases to officially adopt children who already live with them.

On May 30, 2019, President Vladimir Putin signed this law.

Are “foreign agents” constitutional?

- **Decision:** Judgment of the Constitutional Court No. 10-P of April 8, 2014; the Institute for Law and Public Policy submitted an expert opinion on this case
- **Applicants:** Commissioner for Human Rights in the Russian Federation Vladimir Lukin, the “Kostroma Center for Support of Public Initiatives” fund, as well as citizens L.G. Kuzmina[4], S.M. Smirensky and V.P. Yukechev
- **Contested acts:** paragraph 6 of Art. 2 and paragraph 7 of Art. 32 of the Federal Law “On non-profit organizations”, part 6. art. 29 of the Federal Law “On Public Associations” and Part 1 of Art. 19.34 Code of Administrative Offenses of the Russian Federation
- **Result:** the contested acts **do not contradict** the Constitution

Plot

The reason for the consideration of the case was the complaints of the Russian Ombudsman Vladimir Lukin, the “Kostroma Center for Support of Public Initiatives” fund, as well as citizens Lyudmila Kuzmina (head of the “Voice — Volga Region” fund), Sergei Smirensky (director of the NGO “Muravyovsky Park for Sustainable Environmental Management”) and Viktor Yukechev (Director of the non-profit partnership “Press Development Institute — Siberia”). They considered it inconsistent with the Constitution to require the law for non-profit organizations to register as a “foreign agent” with the Ministry of Justice and to indicate their status in all media and Internet publications. According to the law adopted by the deputies of the State Duma, since 2012, non-profit organizations that perform the functions of a foreign agent should be considered NPOs that receive funds from foreign sources and conduct political activities in Russia.

The main arguments in the complaint, the applicants indicated discrimination against NGOs by the source of funding and the lack of a clear formulation of the concept of “political activity”. The latter, in their opinion, makes it possible to attribute to “foreign agents” a completely indefinite wide range of NGOs working, including in the areas of human rights protection or election monitoring.

The initiators of the proceedings stated that the law on foreign agents violates five constitutional rights and principles at once: the equality of all before the law and the courts, the right to freedom of speech, the right to freedom of membership in organizations, the right to participate in the management of state affairs and the right not to testify against oneself.

Since all the complaints concerned the same subject matter, the Constitutional Court joined the applicants' cases into one proceeding.

The essence of the decision

The Constitutional Court **found no signs of unconstitutionality** in the norms of the Law on Foreign Agents.

The ruling stated that the contested requirements for NGOs receiving foreign funding and engaging in political activities (to register as foreign agents) “*do not imply state interference” in their activities and do not mean its “negative legislative assessment*”. At the same time, the Constitutional Court considered that the “*stereotypes that formed in the Soviet era and lost their meaning in modern realities*” underlying such an interpretation are devoid of constitutional and legal grounds.

As regards the definition of “political” activity, as the Court pointed out, it is activity “*for the purpose of exerting influence*”, including by forming public opinion, “*on the decisions and policies of public authorities*”. “Political”, as specified by the Court, cannot be considered activities in the field of science, culture, art, as well as the social sphere, ecology and charity. However, it is impossible in principle to clearly define the concept of “political activity”, according to the Constitutional Court.

The Constitutional Court also stressed that the constitutionality of the measures introduced is also ensured by the “notification procedure” for the formation of the register of NCOs — foreign agents. The only

[4] After the decision was made, Lyudmila Kuzmina was still included in the list of foreign agents.

violation of the Constitution, which the Constitutional Court found in the contested norms, is that the law on foreign agents excludes the application of fines below the lowest limit to "guilty" NPOs — foreign agents (they are defined in the law in the amount of 100 thousand rubles for officials and 300 — for legal entities).

Dissenting opinions

Judge **Vladimir Yaroslavtsev** expressed disagreement with the decision of the Constitutional Court. In his opinion, the legislative structure of the "NGO-foreign agent" implies a negative assessment by the state, is designed to form a negative attitude towards its political activities and can be perceived as a manifestation of distrust or a desire to discredit such an NGO and the goals of its activities. He believes that the introduction of the concept of "foreign agent" is arbitrary, has no objective and reasonable justification and is contrary to the Constitution.

Vladimir Yaroslavtsev stressed that freedom of association "cannot be fully realized without the possibility to freely raise funds from sources not prohibited by law." The judge also noted that even recipients of grants recognized by Russia (for example, those provided by the UN) should be recognized as a "foreign agent".

In his opinion, the types of socially oriented activities defined by the Constitutional Court (culture, ecology, charity, etc.) that are not related to politics are also unreasonably limited. If, in defense of such activities, an NPO is required to hold a political action, for example, a rally against decisions taken by state bodies, the organization automatically becomes a "foreign agent".

A vivid example of the unconstitutional application of the term "political activity" to NGOs, Judge Yaroslavtsev called the fight against corruption by NGOs, emphasizing that the formation of "intolerance to corrupt behavior" is impossible "without constructive criticism of the authorities", including through political actions; moreover, "this political activity is carried out precisely in the interests of the state." But in contrast to the "complacency" of the authorities, an NPO intolerant of corruption can be recognized as a foreign agent. According to the judge, they should not include NGOs whose political actions "objectively were associated with criticism of the decisions of state bodies."

Vladimir Yaroslavtsev concluded that "the challenged legal provisions, given their vagueness, combined with a clearly expressed discriminatory nature, do not comply with the Constitution." He recalled that the Constitution and international norms oblige the state — regardless of political or other conditions — to protect the dignity of the individual "from any form of humiliation by anyone, including the state itself." This requirement, the judge believes, "is not a legal abstraction or an unattainable ideal."

What happened next

Human rights activists called the decision of the Constitutional Court "the worst in its history", accusing the Court of subordination to the executive branch, but hoped that it would still block "punitive prosecutorial practice" against NGOs. The Venice Commission at the Council of Europe did not agree with the decision of the Constitutional Court. After that, the legislation on "foreign agents" continued to "improve" in the direction of its tightening.

Now the term "foreign agent" is applied not only to non-profit organizations, but also to the media and individuals. Thus, the legislation provides for five varieties of foreign agency status: non-profit organizations, unregistered public associations; Media organizations, media — individuals and just individuals.

As of February 2022, hundred organizations, associations, media and individuals have received "foreign agency status". Some received multimillion-dollar fines, others were forced to cease to exist, and some of the "individuals — foreign agents" left Russia.

"The Constitutional Court of the Russian Federation had an excellent chance to save Russian civil society from stigmatization and imposing an unbearable burden on non-profit organizations associated with a huge amount of workload, both administrative (reporting) and financial (fines)," says lawyer **Alexander Peredruk**. "However, the Court did not take advantage of this opportunity. At the same time, the phrase "foreign agent"

is clearly a stigmatizing and not a neutral term — one can hardly believe in good faith that it is not associated with such a historical concept as “enemy of the people”.”

Jury for everyone

- **Decision:** Judgment of the Constitutional Court No. 6-P of February 25, 2016
- **Applicant:** A. Lymar
- **Contested act:** paragraph 1 of part 3 of Art. 31 of the Code of Criminal Procedure of the Russian Federation
- **Result:** the contested act **is contrary** to the Constitution

Plot

A resident of the Chelyabinsk region Alena Lymar, who was accused of killing her daughter, filed a complaint with the Constitutional Court. The punishment under this article provided for life imprisonment. The applicant applied to the court of general jurisdiction for a trial by jury, but was refused. The court was motivated by the fact that the Code of Criminal Procedure does not allow jury trials in cases in which women are charged — after all, they are already protected from life imprisonment.

In the complaint, Alena Lymar pointed out that the Constitution guarantees the equality of all before the law, and men and women in Russia, according to the basic law, have equal rights and equal opportunities for their implementation.

Alena Lymar was not the first to complain about the restrictions on jury trials. In 2014, Vadim Filimonov, a minor accused of murder, turned to the Constitutional Court. He challenged the inability of persons under 18 years of age to appear before a jury, although minors, on the contrary, need increased guarantees of their rights. The Constitutional Court, however, did not agree with this approach and did not recognize the right to jurors for persons under 18 years of age. Among the arguments was the fact that it is possible to challenge the verdicts of the collegium only on procedural grounds, and given the psychological immaturity, a minor defendant may not realize the full seriousness of the consequences of his decision.

The essence of the decision

In the case of Alena Lymar, the Constitutional Court found the provisions of the Code of Criminal Procedure, which deprived women of the right to have their case heard by a jury, inconsistent with the basic law of the country. The judges considered the rules of jurisdiction to be inconsistent with the principles of legal equality and discriminatory, which did not give women the opportunity to appear before a panel of assessors due to the ban on imposing (in fact) the most severe punishment on them.

Women accused of murder under Part 2 of Art. 105 of the Criminal Code of the Russian Federation, were able to petition for consideration of their cases by a jury if hearings on their cases had not been scheduled by the time this decision was made by the Constitutional Court.

The decision noted that any differentiation of legal regulation introduced by the legislator must maintain a balance of constitutional values and ensure the rights guaranteed by the Constitution, and depriving women of a jury trial, provided by law for men aged 18 to 65, does not meet the principle of legal equality, leads to discrimination and limits their right to judicial protection.

Why has this decision been important?

This decision was the first in a gradual series of lifting restrictions on the right of the accused to independently determine the form of legal proceedings. In fact, this is one of the elements of the expansion of the jury — not only in terms of the number of compositions and courts to which “jury” cases have become jurisdictional, but also in terms of the number of those categories of persons who have received the right to choose.

Since 2018, the possibility of trial by jury has been officially assigned to both men and women. The legal restriction of 65 years was also removed — previously, men older than this age could not apply for consideration of their case by non-professional judges. This change was also caused by the decision of the Constitutional Court, which in 2017 recognized differentiation by age as discrimination.

In 2019, the Constitutional Court expanded its ruling in the Filimonov case and still allowed for the possibility of a jury trial if the defendant is under 18 years of age. However, this from that moment on could have happened for teenagers only if there were adult accomplices in the case who were petitioning for a jury, and if it was impossible to separate the case.

Can enforcement proceedings be endless?

- **Decision:** Judgment of the Constitutional Court No. 7-P of March 10, 2016
- **Applicant:** M. Rostovtsev
- **Contested acts:** Part 1 Art. 21, part 2 of Art. 22 and part 4 of Art. 46 of the Federal Law "On Enforcement Proceedings"
- **Result:** the contested acts **are contrary to** the Constitution

Plot

Mikhail Rostovtsev filed a complaint with the Constitutional Court. Five properties belonging to him have repeatedly become the object of recovery. At the same time, the recoverer, OAO "Sberbank" of Russia, withdrew the writ of execution several times, and then reiterated his claims.

The bailiff each time issued a decision on the completion of the enforcement proceedings and on the withdrawal of the seized property from sale. This story has been repeated many times. Mikhail Rostovtsev of the next initiation of enforcement proceedings appealed to the court. He stated that the three-year period established by law for the presentation of a writ of execution had been missed, but the courts did not agree with him, and he appealed to the Constitutional Court.

The Applicant believed that the norms contested by him violated the balance of interests of the parties in the enforcement proceedings — they allowed an unlimited and unlimited right of the exactor to present and withdraw the enforcement document, and then reinitiate the proceedings. In fact, the beginning and end of enforcement proceedings depended on the unmotivated will of the creditor, and such proceedings themselves became unjustifiably endless.

The essence of the decision

The Constitutional Court recognized the contested norms as unconstitutional, agreeing with the position of the applicant. The law was reduced to the fact that the period for presenting the executive document can be interrupted and renewed, and the time that has elapsed before the interruption of the period was not counted in the new period.

Such regulation made the debtor indefinitely under the threat of enforcement measures against him — and this violated his rights: the indefinite withdrawal of his property from the sphere of civil circulation, the restriction of his property rights and the obstacles to effective judicial protection.

The Constitutional Court instructed the legislators to make appropriate changes to the norms of the Federal Law, and before that, to deduct the term of the existing enforcement proceedings in the newly opened procedure.

What happened next

In 2017, the legislators introduced Art. 22 of the Federal Law "On Enforcement Proceedings", part 3.1, which regulates the rules for deducting terms if the recoverer has withdrawn the enforcement document. It would

seem that the problem should have been resolved, but the issues of the relationship between debtors and creditors continue to be put on the agenda of judicial consideration.

So, in December 2021, the Supreme Court tried to determine whether it is an abuse of the right to repeatedly withdraw a writ of execution without explaining the reasons, because even apart from the issues of the term, such behavior of the claimant can limit the debtor.

"The Law on Enforcement Proceedings gives the recoverer the right to repeatedly present the enforcement document for execution after its return, as well as the right to repeatedly withdraw the enforcement document after the initiation of enforcement proceedings, without requiring the exactor to indicate the motives for his decision, on which the legal fate of the procedural action being performed does not depend", — stated in the decision of the Supreme Court.

Long visits for life-sentenced prisoners

- **Decision:** Judgment of the Constitutional Court No. 24-P of November 15, 2016
- **Applicants:** N. Korolyov and V. Korolyova, as well as the Volgograd Regional Court
- **Contested acts:** paragraph "b" of part 3 of Art. 125 and part 3 of Art. 127 of the Criminal Executive Code of the Russian Federation
- **Result:** the contested acts **do not comply** with the Constitution

Plot

The applicants to the Constitutional Court were the spouses Nikolai and Veronika Korolyov. In May 2008, Nikolai Korolyov was sentenced to life imprisonment in a special regime colony for participating in a series of high-profile crimes of the SPAS club on ethnic grounds in the early 2000s. Including, he was convicted for the explosion at the Cherkizovsky market, which killed 14 people, 61 people were injured. Already in prison, Korolev got married.

He is serving his term in the Polar Owl colony in Yamal. The peculiarity of the detention of such convicts is that they live in cell-type premises, and they are allowed only two short visits a year. Those serving sentences not in strict conditions are allowed two long visits a year. Transfer Nikolai Korolev to normal conditions of detention could only happen after 10 years in prison. The couple wanted to have a child with the help of assisted reproductive technologies, but this procedure was only possible under the conditions of a long date.

In the complaint, the Korolyov family pointed out that the ban on long visits during the first ten years of serving a sentence violates their right to family life, and also "is a cruel, inhuman, degrading punishment of a prisoner, and cruel, inhuman, degrading treatment of a wife a prisoner."

The essence of the decision

The Constitutional Court sided with the applicants and found the contested norms inconsistent with Art. 15, 17, 23 and 55 of the Constitution "in conjunction with Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms as interpreted by the European Court of Human Rights". The Constitutional Court ruled that a life-sentenced person should be granted the right to at least one long visit per year, even if he has not yet served ten years of punishment.

The Constitutional Court noted that long visits should not be granted as an incentive at the discretion of the administration of the colony.

What happened next

Some time later, parliamentarians softened the norms of the penal legislation and made changes to the Penal Code of the Russian Federation, providing long visits to life-sentenced prisoners.

The decision of the Constitutional Court, which became the impetus for these changes, was extremely positively assessed by the then member of the Presidential Council for Human Rights **Pavel Chikov**. At the same time, the lawyer noted that the measures proposed by the Constitutional Court were not exhaustive — the Russian legislator still had a lot to strive for.

“This is a very good decision, like all the changes that have been made in recent years under pressure from the European Court of Human Rights (ECHR) [meaning the case of *Khoroshenko v. Russia*],” Chikov commented on the ruling of the Constitutional Court for “Gazeta.Ru”. “Compared to the current situation, this is a serious step forward, a kind of systemic change. [In the European penitentiary system] visits are allowed much more often, because the approach of the penitentiary system is based on the support of any social ties, not necessarily even with close relatives, but in general with any free people, because for the convict this is a key factor in reintegration into society”.

Such an approach, according to Chikov, ideally should be a guideline.

The Constitutional Court today: protest cases, descendants of the repressed and the refusal of the courts to listen to the decisions of the Constitutional Court

"Dadin" article. How the Constitutional Court resolved the issue of compliance of criminal punishment with protest offenses

- **Decision:** Judgment of the Constitutional Court No. 2-P of February 10, 2017
- **Applicant:** I.I. Dadin
- **Contested act:** Art. 212.1 of the Criminal Code of the Russian Federation
- **Result:** the act is recognized as **not contrary** to the Constitution

Plot

In December 2015, the opposition civil activist Ildar Dadin was the first in Russia to be convicted under Art. 212.1 of the Criminal Code of the Russian Federation for repeated violations of the rules for holding rallies and pickets.

The condemnation was preceded by a long story from administrative protocols on protest articles. In 2014, the court fined Dadin twice under Art. 20.2 of the Code of Administrative Offenses of the Russian Federation for pickets and participation in a rally on Manezhnaya Square. For participation in two subsequent actions in the capital — in 2014 and early 2015 — two more administrative protocols were drawn up against Dadin. They resulted in a couple of criminal cases, which were later combined into one proceeding. In one of these episodes, the case was later dismissed due to the imposition of an administrative fine. Having considered the materials of the criminal case, the Basmanny Court sentenced Dadin to three years in prison. In March 2016, following an appeal, the sentence was reduced to two and a half years.

Dadin and his lawyers filed a complaint with the Russian Constitutional Court. In their opinion, Art. 212.1 of the Criminal Code of the Russian Federation, which appeared in 2014 as a reaction to protest activity, allows a person to be retried for the same offense. Responsibility for it comes if the protester commits three or more violations of Art. 20.2 of the Code of Administrative Offenses within six months. Moreover, the norm allows the initiation of a criminal case before the entry into force of court decisions in administrative cases. Moreover, the article allows for the possibility of imposing a sentence of imprisonment for up to 5 years for actions that did not cause harm to human health or property and did not pose a threat to the safety of the population and the environment.

The essence of the decision

As the Constitutional Court notes, the federal legislators cannot ignore the prescription of Art. 50 of the Constitution of the Russian Federation, which, in accordance with the generally recognized principle of *non bis in idem*, prohibits the conviction of someone twice for the same crime, which is consistent with the International Covenant on Civil and Political Rights and with the Convention for the Protection of Human Rights and Fundamental Freedoms.

However, the Constitutional Court believes that the legislators could resort to the institution of criminal liability when an offense is committed by a person who has previously been subjected to administrative punishment for similar acts. "*The recurrence of offenses indicates the insufficiency of the available administrative and legal means to counter violations of the law, which can be considered as a constitutionally significant reason for the criminalization of the relevant acts,*" the Constitutional Court explained in a press release.

In the ruling itself, the Constitutional Court noted that the possibility of such a dualistic approach to the use of administrative and criminal liability was due to the fact that they "have similar tasks" and "complement each other in many respects."

At the same time, it is necessary to observe the general principles of legal liability, which, in particular, require that criminal liability for violating the procedure for organizing rallies and picketing should be adequate to the public danger of the act. "*A crime must be characterized by a criminal social danger, in the absence of which even an act that formally falls under the signs of a criminal offense cannot be considered as such,*" the Constitutional Court emphasized in its decision.

The legislators, when determining what acts are recognized as crimes, are obliged to "avoid excessive use of criminal law repression," the judgment notes. The Constitutional Court believes that if the violation "was of a formal nature" and did not entail negative consequences, then criminal liability for it, motivated by the mere repetition of the commission, is contrary to the Constitution.

The Constitutional Court also emphasized that it is possible to bring a person to criminal responsibility for violating the rules for holding a public action only on the condition that for a specific act imputed to him, he had not previously been subjected to administrative punishment under Art. 20.2 of the Code of Administrative Offenses of the Russian Federation.

The Constitutional Court recommended that the State Duma amend Art. 212.1 of the Criminal Code of the Russian Federation to clarify the normative grounds for criminal liability and penalties for its commission.

The Constitutional Court considered the judicial acts issued against Ildar Dadin to be at odds with the constitutional and legal meaning of Art. 212.1 of the Criminal Code of the Russian Federation and subject to revision.

What happened next

On February 22, 2017, the Presidium of the Supreme Court of the Russian Federation overturned the sentence against Ildar Dadin, decided to drop the case against him, release him from custody and recognize his right to rehabilitation. Among the people and among lawyers Art. 212.1 of the Criminal Code became known as the "Dadin" article.

In August 2019, under Art. 212.1 of the Criminal Code of the Russian Federation, a case was again opened against activist Konstantin Kotov for participating in protests against the exclusion of candidates for elections to the Moscow City Duma. On September 5, 2019, Kotov was sentenced to 4 years in prison. Lawyer Maria Eismont called that verdict a "flagrant situation" in which the court completely ignored the mandatory decision of the Constitutional Court on Dadin's complaint.

Kotov's defense filed a complaint with the Constitutional Court. In January 2020, the Constitutional Court issued a ruling on the need to review Kotov's sentence, emphasizing once again that criminal liability under Art. 212.1 of the Criminal Code of the Russian Federation should only attack in the event of causing serious harm to someone.

However, the court of cassation simply instructed the Moscow City Court to once again check the legality of the decision made by the court of first instance. On April 20, the Moscow City Court, following an appeal review of Kotov's case, commuted his sentence to 1.5 years in prison.

"The cautious, conformist, half-hearted and not very well-written ruling on Dadin, as well as the vague definition on Kotov, and most importantly, the complete inability of the Constitutional Court to insist on the execution of its not even the most successful judicial acts, actually untied the hands of law enforcers. These acts of the Constitutional Court turned into random quotes-paragraphs in sentences, arbitrarily pulled out to fill the paper with letters before the phrase "deem guilty"," **Maria Eismont** commented on the practice of using the "Dadin" article.

From the moment of its adoption to the present, this article of the Criminal Code has been one of the most controversial and condemned, especially among human rights activists.

In the fall of 2017, LDPR deputies proposed decriminalizing the “Dadin” article, but two years later, the State Duma rejected the bill. In the same month, Sergey Shargunov, a deputy from the Communist Party faction, submitted to the State Duma a bill softening Art. 212.1 of the Criminal Code of the Russian Federation. He insisted on a two-fold reduction in the amount of the fine and suggested that the violation be considered a criminal offense “if the act was committed repeatedly” and harmed “constitutionally protected values.” The responsible committee of the State Duma on state construction and legislation returned the bill to the author due to the lack of a response from the government of the Russian Federation.

Later, Shargunov re-submitted the bill to the parliamentarians, but the Cabinet of Ministers did not support it.

In July 2020, the deputy from the Communist Party of the Russian Federation Valery Rashkin proposed to cancel Art. 212.1 of the Criminal Code of the Russian Federation. However, the initiative was immediately criticized in the Government of the Russian Federation and the Supreme Court. The executive body, among other things, referred to the decision of the Constitutional Court, which recognized that Art. 212.1 of the Criminal Code does not contradict the Constitution. The Supreme Court, in its review, also found Rashkin's proposal insufficiently substantiated.

As of May 2022, 6 people have been convicted in Russia under the “Dadin” article.

How Master’s students got the right to deferment from the army

- **Decision:** Judgment of the Constitutional Court No. 15-P of April 17, 2018
- **Applicants:** P. Spiridonov and the Bugulma City Court of the Republic of Tatarstan
- **Contested act:** subparagraph “a” of paragraph 2 of Art. 24 of the Federal Law “On military duty and military service”
- **Result:** the contested act **does not comply** with the Constitution

Plot

The bachelor of the Faculty of Architecture and Civil Engineering of the National Research Mordovian State University named after N.P. Ogaryov Pavel Spiridonov. At that time, in his life he received two deferrals from the army — one for graduation from school, and the other for university studies.

When in the summer of 2016, after graduating from a bachelor's degree, he was going to continue his education and get a Master’s degree, the Saransk draft board did not agree with his plans. Its employees considered that Pavel Spiridonov could not continue his studies, since he had already taken advantage of two deferrals, and the third was not allowed by law. The Proletarsky District Court of Saransk and higher authorities agreed with this decision.

A similar process took place in the Bugulma City Court of Tatarstan. Roman Khalikov applied there to challenge the decision of the draft board. The court considering the case appealed to the Constitutional Court with a request, because it saw inconsistency with the Constitution in the norms, in particular, a violation of the principle of equality before the law and the court. Thus, the request noted that persons under the age of 18, while receiving school education, are in fact in a privileged position in relation to those who, at the time of receiving a complete secondary education, have already passed the age of majority.

The essence of the decision

The Constitutional Court agreed with the position of the applicants. It determined that citizens who belonged to the same category found themselves in unequal conditions in terms of the possibility of obtaining higher education under the master's program.

Such inequality, the CC pointed out, was due only to the fact that some of them reached the age of 18 before leaving school and had already taken advantage of the deferment from the army, while others did not. The restriction of the right of citizens who received a deferment due to reaching the age of majority

before graduation from school, to a deferment from conscription in the army while being in graduate school, when such a right was granted to citizens who formed the same category with them, had no objective justification and put them in an unequal position, the Constitutional Court decided .

The court recommended that appropriate changes be made to the legislative regulation.

What happened next

The decision of the Constitutional Court made it possible to equalize the rights of persons belonging to the same category, but differentiated due to a virtually random coincidence, that is, a birthday in the first or second half of the year. Subsequently, the law was amended accordingly. A person's right to education outweighed his public duties.

In general, this decision of the Constitutional Court was assessed positively. **Yulia Smirnova**, chairman of the Association of Students and Student Associations of Russia, said in an interview with RBC that "such a decision harmoniously fits into the concept of the development of education and science. It is positive and measured."

A few months later, the Constitutional Court went even further, and, at the request of the Leninsky District Court of St. Petersburg, extended the deferment to students of secondary vocational institutions. Kommersant wrote in 2018 that the Constitutional Court "*granted school graduates the right to deferment from military service in order to receive education, despite the objections of representatives of the Federal Assembly, the government, the president and the prosecutor's office. Only the Presidential Human Rights Council supported the graduates.*"

Can foreigners own Russian media?

- **Decision:** Judgment of the Constitutional Court No. 4-P of January 17, 2019; the Institute for Law and Public Policy submitted an expert opinion on this case
- **Applicant:** E. Finkelstein
- **Contested act:** Art. 19.1 of the Law "On Mass Media"
- **Result:** the contested act **is contrary** to the Constitution

Plot

Entrepreneur, head of PMI holding Yevgeny Finkelstein applied to the Constitutional Court. The owner of dual citizenship and 49 % in the authorized capital of "Radio-Shans" LLC tried to challenge the unfair, in his opinion, decision of the general meeting of media owners: the second owner of LLC, "Russian Radio — Eurasia" JSC, who had a 51 % stake, re-registered in order of assignment of the company's license for radio broadcasting in St. Petersburg.

During the trial, Evgeny Finkelstein encountered a problem — in the refusal decisions, the courts wrote about the dual citizenship of the entrepreneur, because of which he could not be a member of the organization that broadcasts. Accordingly, he also could not appeal the decisions of the general meeting. Because of this, Evgeny Finkelstein appealed to the Constitutional Court with a complaint against Art. 19.1 of the Law of the Russian Federation "On the Mass Media", which since 2016 prohibited persons with dual citizenship from owning more than 20 % of shares in Russian media.

The essence of the decision

The Constitutional Court ruled that the provisions of the contested article were inconsistent with the fundamental law of the country, but the judges considered the ban on foreign participation in the media per se admissible.

Only wordings that did not make it possible to accurately determine the circle of subjects to which the restriction on the share of foreign capital in the Russian media applies were recognized as unconstitutional. The legislators had to improve the provisions of the law in such a way as to remove the issues identified in the judgment.

The constitutionality of the ban as a whole was explained by the Constitutional Court as ensuring national interests: the restriction prevents the establishment of strategic control over the media and the threat to national security.

Dissenting opinions

Judge **Konstantin Aranovsky** did not agree with the general decision of the Constitutional Court. He considered the introduction of restrictions on the prohibition of foreigners or persons with dual citizenship from owning Russian media unconstitutional, since the real threat to information security referred to by legislators has not been proven, and "phobia or panic does not allow restricting rights and freedoms."

"Lawful restrictions on rights and freedoms have a protective meaning and are intended precisely to protect constitutional values… Nothing can be more "useful" than human rights in the Russian constitutional legal order, where they are of the highest value," Aranovsky said in a dissenting opinion. "They cannot be preferred to another good, public interest in the influential moods and intentions of the authorities. Even in favor of high citizenship and culture, it is impossible to forcibly reduce, say, the freedom of broadcasting "Russian chanson", and you will have to endure even toxically high doses of sincerity in the form of a daring urka with a bitter fate and mother, which waits in vain, in the everyday writing and spirit-uplifting exodus of logging and thieves and people's proletarian truth."

What happened next

In March 2020, the State Duma adopted amendments to the Mass Media Law in the first reading. Almost a year and a half later, in July 2021, they were signed by Russian President Vladimir Putin. The bill clarified the rights of foreign citizens and companies owning up to 20 % of the shares or shares of Russian media.

According to the intention of the authors, the document should have eliminated the contradictions between the individual parts of the Mass Media Law. After the adoption of the amendments, the restrictions that did not allow the participant to exercise their rights within the framework of 20 % ownership were removed. Among them was the right to judicial protection. Also, the vague wording "media participant", which was used along with the concept of "media founder", was removed from the law on mass media.

Recalculation of property tax

- **Decision:** Judgment of the Constitutional Court No. 10-P of February 15, 2019
- **Applicant:** O.F. Nizamova
- **Contested act:** Art. 402 of the Tax Code of the Russian Federation (lost force in 2020)
- **Result:** the contested act **does not contradict** the Constitution

Plot

Olga Nizamova, a mother of many children from the Altai Territory, applied to the Constitutional Court. In her opinion, Art. 402 of the Tax Code of the Russian Federation does not comply with Part 2 of Art. 6 of the Constitution of the Russian Federation (on the equality of Russian citizens in rights, freedoms and duties), since it allows the constituent entity of the Russian Federation to create conditions for calculating the amount of tax on the property of individuals in an increased amount — due to a higher range of tax rates calculated based on the inventory value of real estate.

In 2013 the applicant bought a house for her personal subsidiary plot in Barnaul. In 2016, she received a property tax in the amount of 47.5 thousand rubles. It was calculated using a high range of tax rates from the inventory value of the house, which was determined at 2.8 million rubles. And if the tax was determined on the basis of the cadastral value, then it would amount to 17 times less.

The applicant failed to obtain a recalculation of the tax. The courts found no grounds for this, since no decision was made in the Altai Territory to determine the tax base based on the cadastral value of real estate. The applicant considered that the tax burden on equivalent property cannot vary many times only depending on the region of its location, and applied to the Constitutional Court.

The essence of the decision

The Constitutional Court ruled that Art. 402 of the Tax Code of the Russian Federation **does not violate** the Constitution, since it does not prohibit the taxpayer to individually demand the calculation of tax on the basis of the cadastral value, if rates in the constituent entity of the Russian Federation are still calculated according to the inventory.

According to the Court, the amendments made in 2014 to the Tax Code on the payment of property tax on individuals should bring the valuation of real estate closer to the market value and ensure a more equitable distribution of the tax burden. Therefore, the transitional period, which allowed the regions to use the inventory value for tax calculation until 2020, was legally established.

At the same time, the Constitutional Court drew attention to the fact that taxation should be proportionate, and significant differences in the amount of property tax, depending on the method of its calculation, are unacceptable. The provisions of the Tax Code of the Russian Federation should be applied taking into account the identified constitutional and legal meaning, and the decisions in the case of Olga Nizamova were thus subject to revision.

Dissenting opinions

Disagreement with the decision of the Constitutional Court in a dissenting opinion was stated by Judge **Sergei Kazantsev**.

He agreed with the decision that the contested article of the Tax Code does not contradict the Constitution. However, the judge noted that the establishment and change of the tax base and tax rate are in the powers of the legislature, taking into account the peculiarities of the local tax. Therefore, according to Sergei Kazantsev, not only property owners cannot individually demand a tax recalculation, but the courts, including the Constitutional Court, do not have the authority to do so.

Why has this decision been important?

The Constitutional Court gave citizens the opportunity to demand a recalculation of property tax. The decision of the Court led to a wave of lawsuits to the tax authorities demanding the return of overpaid amounts to citizens.

In April 2019, the Federal Tax Service sent out a letter in which it ordered regional divisions throughout Russia to study and apply the Constitutional Court's ruling. The Ministry of Finance of Russia also repeatedly referred to it when it pointed out the right of citizens individually to demand the application of the cadastral value for calculating property tax.

How the Constitutional Court recognized the right of the children of the repressed to return home

- **Decision:** Judgment of the Constitutional Court No. 39-P of December 10, 2019
- **Applicants:** A. Meissner, E. Shasheva and E. Mikhailova; case card on the website of the Institute for Law and Public Policy — here
- **Contested acts:** Art. 13 of the Law "On the Rehabilitation of Victims of Political Repression", paragraphs 3 and 5 of Art. 7, paragraph 1, part 1 and part 2 of Art. 8 of the Law of the city of Moscow "On ensuring the right of residents of the city of Moscow to housing"
- **Result:** the contested acts **do not comply** with the Constitution

Plot

The applicants to the Constitutional Court were Alisa Meissner, Evgenia Shasheva and Elizaveta Mikhailova. They were born in exile in the 1930s, as their parents were repressed.

The first such complaint against the law "On the Rehabilitation of Victims of Political Repressions" was submitted to the Constitutional Court back in 1995. The applicant Zoya Aleshnikova, who lived in exile with her repressed parents, received the status of "victim of repression". The basis for this decision was the law of the RSFSR "On the Rehabilitation of Victims of Political Repression", adopted in 1991, which did not recognize children who were with their parents in exile or in places of deprivation of liberty as repressed.

The applicant, who was with her parents in a special settlement, believed that she should not only be recognized as a victim, but also receive the legal status of "repressed". Then the Constitutional Court came to the conclusion that the provision of the first paragraph of Part 1 of Art. 2.2 of the law does not comply with the Constitution: "*The fact that by the time of the unjustified application of repressions to parents they had not reached the age that allowed them to be legally held accountable does not matter for assessing their legal status and cannot serve as a basis for restricting their rights and freedoms in rehabilitation process,*" the judgment stated.

However, the 1991 law guaranteed the relatives of the repressed the right to compensation: free housing in the city where the families lived before the arrest. But in 2005, the State Duma adopted an amendment, according to which the regions themselves could establish requirements for relatives of the repressed in order to receive compensation. In some constituent entities of the Russian Federation, the rules turned out to be such that they actually deprived the so-called "children of the Gulag" of the right to return home. Among them was Moscow, where Alisa Meissner, Evgenia Shasheva and Elizaveta Mikhailova were trying to return.

The essence of the decision

In 2019, the Constitutional Court sided with the applicants and found the contested norms unconstitutional to the extent that they "due to the uncertainty of the procedure for registration and provision of living quarters… prevent compensation for harm to rehabilitated persons." The Constitutional Court demanded that federal and regional legislators immediately amend the norms so that victims of repression can receive compensation and return to the place of residence of their repressed relatives.

"The absence in the federal law of a special normative provision for the right of rehabilitated persons and members of their families to return to those areas and settlements where they lived before the repression was applied to them, creates uncertainty regarding the possibility of exercising this right by this category of persons, despite the fact that their interest in provision of residential premises competes with the same interest of other categories of citizens, for whom the legislator, for socially significant reasons, has recognized the right to improve housing conditions and who are provided with residential premises of the state or municipal housing stock," the Constitutional Court pointed out.

Dissenting opinions

Judge **Konstantin Aranovsky** gave a dissenting opinion on the case. He agreed with the decision of the Constitutional Court, but decided separately to speak about the succession of Russia and the Soviet Union. "*The Russian Federation does not continue with itself in law, but replaces on its territory a state that was once illegally created, which obliges it to reckon with the consequences of its activities, including political repression,*" he pointed out.

"Even in the conditional legal sense, Russia does not need to bring the blame for Soviet repressions on its state personality and replace the state of victorious and then fallen socialism. This is already impossible because its guilt in repressions and other unforgivable atrocities, beginning with the overthrow of the legitimate authority of the Constituent Assembly, is immeasurable and literally unbearable.

With such guilt, statehood has no right and is not able to exist lawfully, offending justice, freedom and humanity," Judge Aranovsky expressed his opinion.

Russia, the judge wrote, should have the constitutional status of a state that is not involved in totalitarian crimes.

The dissenting opinion expressed by Konstantin Aranovsky provoked a wide discussion in society. Some experts associate it with the updated wording in the Constitution about Russia as the legal successor of the USSR, as well as a ban on the publication of dissenting opinions of judges of the Constitutional Court.

Consequences

In pursuance of the decision of the Constitutional Court, the Ministry of Construction developed a bill, which, however, proposed to put the victims of repression at the end of the general queue for affordable housing. The waiting period could be 25–30 years — applicants and people in a similar situation with them may simply not live to return home. Work on it was frozen.

The second bill was developed by State Duma deputies Sergei Mironov and Galina Khovanskaya. The document provided for a priority procedure for obtaining housing for "children of the Gulag". Veterans of the Great Patriotic War or the liquidators of the accident at the Chernobyl nuclear power plant have a similar order. However, the bill was rejected.

The decision of the Constitutional Court has not yet been executed. This provoked the filing of the first-ever class action lawsuit against the State Duma with a demand to recognize as illegal its inaction in the issue of providing housing for the children of the repressed. The Supreme Court did not accept it. The story continues to develop.

The case of bona fide purchasers, or the right to review decisions

- **Decision:** Judgment of the Constitutional Court No. 30-P of June 26, 2020
- **Applicants:** the Odnodvortsev family; case card on the website of the Institute for Law and Public Policy — here
- **Contested acts:** part 1 of Art. 439 of the Code of Civil Procedure, paragraph 4 of part 1 of Art. 43 of the Federal Law "On Enforcement Proceedings", as well as parts 3 and 5 of Art. 79 of the federal constitutional law "On the Constitutional Court"
- **Result:** norms are recognized as **not contradicting** the Constitution

Plot

The Odnodvortsev family appealed to the Constitutional Court with a complaint about a number of norms of Russian legislation. They argued that, taken together, the contested provisions did not allow them to stop the process of eviction from the apartment.

Valery Odnodvortsev legally bought an apartment, which, as it turned out later, "withdrew from the possession of the city of Moscow against the will of the owner" as a result of the illegal actions of the former owner. In 2010, the Preobrazhensky District Court of Moscow recognized Valery Odnodvortsev as a bona fide

purchaser, but the Moscow Department of Housing Policy and Housing Fund later obtained a decision through the courts to evict the family from the apartment.

This happened due to the interpretation of paragraph 1 of Art. 302 of the Civil Code, according to which the real owner of the disputed property has the right to claim it even from a bona fide purchaser. In 2017, in the case of Alexander Dubovets, the Constitutional Court expressed a position on the impossibility of reclaiming property from a bona fide purchaser if it had left the state's possession due to improper performance by the authorities of their functions — exactly for this reason, the Odnodvortsev family was under the threat of eviction. However, the courts in their case refused to take this into account. The essence of the arguments of general jurisdiction was that they were not parties to the constitutional proceedings in the Dubovets case, and the Constitutional Court in its decision did not indicate the reconsideration of all similar cases.

The essence of the decision

The judgment in the case of the Odnodvortsevs became one of a whole series of decisions to protect the rights of bona fide purchasers and combined two pain points at once: substantive law as such and procedural mechanisms for its protection.

In 2020, the Constitutional Court agreed with the family's arguments and confirmed their right to housing. However, it was not so much the position of the Constitutional Court on paragraph 1 of Art. 302 of the Civil Code, but the first attempt by the Court to create in the law a mechanism for reviewing court decisions in similar cases of third parties — those who themselves have not previously applied to the Constitutional Court. Moreover, the judgment directly obliged the legislators to develop and consolidate such a mechanism. The Constitutional Court recalled that its decisions do not require confirmation by other bodies, and "the execution of the instructions of the Constitutional Court cannot be made dependent on the discretion of any officials."

5 years before the decision in the Odnodvortsevy case, the Constitutional Court checked the norms on one-time compensation paid by the state to those who lost their homes. In particular, it was about the owners who did not have the right to claim it from a bona fide purchaser. The Constitutional Court recognized the norms as unconstitutional, since they allowed "the courts to refuse to pay compensation to the mentioned bona fide purchaser with the reference that there are no grounds for holding the state body liable for illegal actions (inaction) committed during registration."

In April 2003, for the first time in its jurisprudence, the Constitutional Court addressed the issue of the acquirer's good faith, defining the legal meaning of this concept. The Constitutional Court confirmed the impossibility of seizing a thing in the order of restitution from a person who meets the requirements of Art. 302 of the Civil Code of the Russian Federation. The court considered that the protection of the rights of an owner who is not a party to the transaction is possible only by satisfying a vindication claim, which requires the grounds provided for in Art. 302 of the Civil Code of the Russian Federation that give the right to claim property from a bona fide purchaser — gratuitous acquisition of property by a bona fide purchaser, disposal of property from possession the owner against his will, etc.

How did the legal problem develop further?

The amendments proposed by the State Duma after the decision on the Dubovets case were introduced into the law. They were designed to strengthen the protection of bona fide home buyers. According to the law, the purchaser of property, who relied on the data of the state register during the purchase, is recognized as bona fide until it is proven in court that "*he knew or should have known about the absence of the right to alienate property from the person from whom the rights to it were transferred to him*" . The court, by law, must also refuse to claim real estate if more than three years have passed since the entry of data on the first bona fide purchaser into the state register.

The adopted bill caused a generally positive response, however, according to some experts, it is unfinished and does not fully protect the interests of bona fide purchasers, especially in terms of relations between a

citizen and the state and the timing of compensation. Grigory Vaypan, a lawyer who represented the interests of the Odnodvortsev family, spoke about this:

"If we are talking about a dispute between individuals, then this [compensation mechanism] is a good measure. But in situations where the state applies for claiming an apartment, this rule does not make sense: the state takes away an apartment from a person, and he can receive its value from the state through the court. This is a senseless exchange, during which a person is thrown out into the street for no reason. The European Court of Human Rights writes about this in all its rulings: a private person, unlike the state, has an "emotional attachment" to a particular apartment."

In 2021, amendments were adopted as a result of the decision in the Odnodvortsevy case — now a review of cases is possible even if the participants in the process were not a party to constitutional proceedings.

The Institute continues to develop the topic of protecting the rights of bona fide purchasers. Now we are working on the case of Elena Psaryova, who is trying to achieve the application in her case of the position expressed by the Constitutional Court in the Dubovets case. In the meantime, this has not happened, Elena lives under the threat of eviction. The courts refuse to reconsider her case — even despite the ruling of the Constitutional Court on her complaint, which contains references to the 2017 decision.

This case has become another example when the positions of the Constitutional Court and the meaning of the contested norms revealed by the Court are ignored by the courts of general jurisdiction, and the actions of the legislators to correct the situation are not effective enough to eliminate the problem.

What compensation can be received after the termination of the administrative case?

- **Decision:** Judgment of the Constitutional Court No. 36-P of July 15, 2020
- **Applicants:** R.A. Loginov and R.N. Sharafutdinov
- **Contested acts:** Art. 15, 16, part 1 of Art. 151, 1069 and 1070 of the Civil Code of the Russian Federation
- **Result:** the contested acts **do not contradict** the Constitution

Plot

As follows from the case file, Roman Loginov was brought to justice under Part 1 of Art. 12.8 of the Code of Administrative Offenses (driving a vehicle by a driver who is intoxicated). The court deprived him of his driver's license for a year and a half and fined him 30 thousand rubles. Later, the Supreme Court annulled the judicial acts and terminated the proceedings due to lack of evidence of a violation.

After that, Roman Loginov filed a lawsuit against the Ministry of Finance demanding compensation for damages (expenses for paying for the services of a defense lawyer in an administrative offense case and a representative in a civil case, for paying a state fee, an administrative fine and reimbursement of transportation costs to a defense lawyer) and pay compensation for moral damage.

The Zavodoukovsky District Court of the Tyumen Region satisfied Loginov's claim in part, refusing compensation for moral damages. The court explained this by the fact that the termination of the proceedings in itself did not speak of the illegality of the actions of the official who drew up the protocol, and therefore did not provide for compensation for non-pecuniary damage. The Tyumen Regional Court reversed this decision, refusing to satisfy the claims in full. The higher authority considered that the actions of the official in the course of the proceedings on the administrative case were not recognized as illegal, and his guilt in the unreasonable bringing of the motorist to administrative responsibility was not established. Loginov, on the other hand, believed that "the termination of proceedings in the case of an administrative offense in itself indicates the illegality of the actions of a state body or official."

In July 2017, a report on an administrative offense was drawn up against Rail Sharafutdinov. The police officers considered that he was driving a Kamaz with a trailer without special permission, the weight of the cargo of which exceeded the allowable figures. But when the truck was re-weighed, the axle load was not

exceeded. After that, the court found that the first weighing was carried out in improper conditions, and the proceedings were discontinued.

Rail Sharafutdinov also unsuccessfully tried to recover damages from unlawful bringing to administrative responsibility: but in his case, the court referred to the fact that the unlawful actions of the policemen were the cause of the losses.

Both drivers appealed to the Constitutional Court with a request to check for compliance with the Constitution of Art. 15 (compensation for damages) and 1069 of the Civil Code (liability for harm caused by state bodies, local governments, as well as their officials) and Art. 28.2 of the Code of Administrative Offenses of the Russian Federation (protocol on an administrative offense).

Roman Loginov asked to additionally check the constitutionality of Art. 16 (compensation for damages caused by state bodies and local governments), 151 (part 1, compensation for moral damage), 1070 (responsibility for harm caused by illegal actions of bodies of inquiry, preliminary investigation, prosecutor's office and the court) of the Civil Code of the Russian Federation, as well as parts 1, 2 and 3 of Art. 24.7 of the Code of Administrative Offenses of the Russian Federation (expenses in the case of an administrative offense).

The essence of the decision

The Constitutional Court ruled that the obligation to reimburse legal costs **does not depend on the guilt of the losing party**, but to compensate for non-pecuniary damage, proof of guilt is required. At the same time, the Court noted that parts 1, 2 and 3 of Art. 24.7, as well as Art. 28.1 and 28.2 of the Code of Administrative Offenses cannot be considered as violating the constitutional rights of the applicants, since they do not regulate relations related to the reimbursement of expenses in the aspect indicated by the applicants.

The Constitutional Court also considered inadmissible the complaint of Rail Sharafutdinov regarding the inclusion in the damages of the cost of storing a car in a special parking lot. The decision clarifies that such expenses should have been paid by the state (part 12 of Art. 27.13 of the Code of Administrative Offenses), and the justice of the peace should have reflected this in the decision to terminate the proceedings.

The Constitutional Court indicated that the applicant has the right to recover the spent money from the owner of the special parking lot in a civil law order or to return it in the manner established by regional legislation, with reference to Part 10 of Art. 27.13 of the Code of Administrative Offenses. He also noted that the materials submitted by Rail Sharafutdinov did not confirm the application of Art. 61 Code of Civil Procedure and Art. 13 of the Police Act.

The court wrote that only Art. 15, 16, part 1 of Art. 151, Art. 1069 and 1070 of the Civil Code were the subject of consideration in the case, since it is on their basis that the current legislation resolves the issue of reimbursement of expenses after unlawful bringing to administrative responsibility.

Having studied the practice of applying these articles, the Constitutional Court noted that the courts refuse to reimburse expenses if the actions of officials in such cases are recognized as lawful. Without establishing the guilt of an official in unjustified administrative persecution, it is impossible, in the opinion of the Court, to compensate for damages and costs.

Thus, the CC concluded that, on the basis of Art. 15, 16, 1069 and 1070 of the Civil Code reimbursement of expenses for the services of a defense counsel and other expenses **cannot be denied** for people in respect of whom cases have been terminated under clauses 1, 2, part 1 of Art. 24.5 of the Code of Administrative Offenses (in the absence of an event or composition of an administrative offense) or according to paragraph 4 of part 2 of Art. 30.17 of the Code of Administrative Offenses (due to failure to prove circumstances) **with reference to the failure to prove the illegality** of actions (inaction) of state bodies, officials or the failure to prove the guilt of officials in illegal administrative prosecution.

By decision of the Constitutional Court, a citizen who has suffered losses due to illegal or erroneous actions of officials **has the right to compensation for expenses**. At the same time, the Court found that the recovery of non-pecuniary damage is lawful only if there is guilt.

And what does this mean in practice?

"In the decision, the Constitutional Court drew attention to the fact that the losses incurred during the restoration of the right by a person in respect of which the decision to bring to administrative responsibility was canceled due to the absence of an event or corpus delicti or due to the failure to prove the circumstances on the basis of which it was issued, in essence, they are court costs," lawyer **Alexander Peredruk** comments on this decision. "The court emphasized that the reimbursement by the losing party of a legal dispute of the expenses of the other party is not conditional on establishing its guilt in illegal behavior — the criterion for the existence of grounds for reimbursement is the final decision determining in whose favor the dispute is resolved.

In other words, the Constitutional Court of the Russian Federation indicated that if the case of an administrative offense was dismissed, then in order to recover court costs, it is not necessary to prove the guilt of officials, regardless of what sanction the person was involved in and what measures to ensure the proceedings were applied.

This decision of the Constitutional Court of the Russian Federation has already been reflected in the practice of courts of general jurisdiction — for example, the Supreme Court of the Russian Federation in one of its rulings indicated that the costs of paying for legal services incurred by a person in connection with an appeal against a decision to bring him to administrative responsibility are subject to reimbursement regardless of the guilt of the official who issued the said decision.

In this ruling, the Supreme Court of the Russian Federation, considering the legality of judicial acts of lower instances, drew attention to the fact that the final act in the case of an administrative offense was adopted in favor of the plaintiff, therefore he has the right to award court costs related to the defense in the case of an administrative offense.

The legal position formulated by the Constitutional Court certainly increases the level of protection of the right of citizens to legal assistance — since the principle of the presumption of innocence clearly indicates that the absence of a decision to involve a citizen that has entered into force means his innocence, then there is no reason to create an unfavorable situation for him, including expressed in the incurring of court costs."

A series of pickets = a mass event?

- **Decision:** Judgment of the Constitutional Court No. 19-P of May 17, 2021
- **Applicant:** I. Nikiforova; case card on the website of the Institute for Law and Public Policy — here
- **Contested acts:** part 1.1 of Art. 7 of the Federal Law "On meetings, rallies, demonstrations, marches and pickets" and part 2 of Art. 20.2 of the Code of Administrative Offenses of the Russian Federation
- **Result:** the contested acts **are contrary** to the Constitution

Plot

In 2020, Irina Nikiforova was brought to justice for organizing a series of solo pickets against the construction of an incinerator. From February 3 to February 26, 2020, residents of Kazan went out one by one to the building of the Cabinet of Ministers of Tatarstan with the same poster. At the same time, no more than one picket was held at the place of the action per day, which formally ruled out the mass character of the gathering.

For this, Irina Nikiforova was brought to administrative responsibility, qualifying her actions under Part 2 of Art. 20.2 of the Code of Administrative Offenses (organization or holding of a public event without filing a notification in the prescribed manner). She did not agree with this and, after a series of court decisions enforced in higher instances, she appealed to the Constitutional Court.

In the complaint, the applicant noted that a series of single pickets in the form of a picket queue, in the absence of the criterion of simultaneity, does not form a crowd. At the same time, the obligation to notify the authorities about the holding of a rally or demonstration is a necessary restriction on the right to peaceful assembly due to the mass character, which increases the risk of disturbing public order. Because of this, she

asked to recognize Part 1.1 of Art. 7 of the Federal Law “On meetings, rallies, demonstrations, marches and pickets” and Part 2 of Art. 20.2 of the Code of Administrative Offenses that do not comply with the Constitution.

The essence of the decision

The Constitutional Court recognized the contested norms as inconsistent with the fundamental law of the country, but only in the form in which they were applied in the applicant's case.

The unity of intent and the general organization of single pickets cannot testify to a hidden form of holding a single public event. The Constitutional Court urged the courts to take into account other circumstances: the number of single pickets, territorial boundaries, time intervals, as well as the consequences. The rules for conducting collective actions can be applied to single picketing, “when the totality of single pickets is expressed externally in the simultaneous and, as a rule, continuous participation in it of a group of persons, objectively requiring the adoption of necessary interim measures.”

What is the problem

Lawyer Vadim Danshov, who prepared a complaint to the Constitutional Court, noted that the problem with pickets remains largely unresolved due to the fact that the Constitutional Court did not evaluate the innovations introduced into the “picket” legislation at the end of 2020. The changes make it possible to qualify the picket queue as a mass event.

“It is not clear whether the new edition complies with this decision? How does the ban on qualifying single pickets as a single public event, if they are held at different times, compare with the rule allowing a collection of pickets that are held alternately to be qualified as a single event? The court did not fully answer these questions and, unfortunately, did not examine the new edition,” Vadim Danshov explained to “Kommersant”.

However, the main problem of this case lies not so much in the cautious position of the Constitutional Court, but in the unwillingness of the courts of general jurisdiction to conform to the meaning of the norms identified by the Constitutional Court. Recently, lawyers say, this is becoming a trend. In December 2021, the Supreme Court refused to review Irina Nikiforova's case, despite a direct instruction from the Constitutional Court. At the same time, the Supreme Court never referred to the decision in which the Constitutional Court assessed the qualifications used in her case.

“*It's paradoxical. In the complaint, we asked to reconsider the case due to new circumstances, we refer to the operative part of the decision of the Constitutional Court, and the Supreme Court of the Russian Federation did not seem to have read our complaint*,” Vitaly Isakov, lawyer of the Institute, commented on this decision in an interview with “Kommersant”. — *Complete disregard. If the Constitutional Court were to have significant authority, the practice would be brought into line with its rulings even before people file a complaint for revision***.**”

Can lawyers be inspected?

- **Decision:** Judgment of the Constitutional Court No. 38-P of July 20, 2021
- Applicant: R.R. Idiyatdinov
- **Contested act:** paragraph 6 of Art. 34 of the Federal Law "On the Detention of Suspected and Accused of Committing Crimes"
- **Result:** the contested act complies with the Constitution

Plot

Lawyer Ramil Idiyatdinov arrived at the pre-trial detention center on April 4, 2019 to meet with his client. At the checkpoint, he passed through a metal detector and turned in his cell phone. However, on the way to the room reserved for meeting with the principal, the junior inspector stopped the lawyer. It seemed to the employee of the Federal Penitentiary Service that there was a telephone in the pocket of Idiyatdinov's trousers, so he offered to inspect the items that were with him. At the same time, the inspector refused to draw up an examination protocol.

Idiyatdinov, believing that his rights had been violated, turned to the prosecutor's office. In addition, the lawyer appealed against the actions of the SIZO administration in court: he demanded that the search without drawing up a protocol be declared unlawful and and the administration be obliged to keep the records from the surveillance cameras on the territory of the institution and the chest DVR of the officer who conducted the search.

However, the prosecutor came to the conclusion that the administration of the pre-trial detention center acted within the law. And soon the Bugulma City Court refused to satisfy the administrative claim — later higher authorities, including the Supreme Court of the Russian Federation, agreed with this decision. The courts referred to paragraph 6 of Art. 34 of the Federal Law "On the Detention of Suspected and Accused of Crimes" and to the order of the Ministry of Justice of the Russian Federation, which approved the procedure for conducting searches in correctional institutions, which prescribes that an inspection report be drawn up only in the event of the seizure of prohibited items.

Then the lawyer filed a complaint with the Constitutional Court of the Russian Federation. According to Idiyatdinov, the cassation instance did not take into account his reference to the Ruling of the Constitutional Court dated March 6, 2008 No. the administration of the institution of a reasoned decision on a personal search and without a written fixation of these actions is not allowed. The lawyer argued that the challenged norm, in terms of the meaning given to it by the by-law normative act and judicial practice, contradicts Art. 55 of the Constitution of the Russian Federation.

In addition, according to Idiyatdinov, the inequality established by law between defenders — the accused and investigators, who are not searched at all, is groundless. Indeed, in the second sentence, paragraph 6 of Art. 34 of the Federal Law stipulates that things and clothes of persons in charge of criminal cases are not subject to inspection.

The essence of the decision

The Constitutional Court refused to consider the issue of the fundamental impossibility of examining a lawyer, since Idiyatdinov had not brought it before the court before and did not mention it in the complaint, and the verification of constitutionality "in the order of abstract normative control" was unacceptable.

In addition, the admissibility of a search of a lawyer on the territory of institutions where convicts are serving their sentences was previously stated by the Constitutional Court in Ruling No. 428-OP dated March 6, 2008. The same position can be extended to searches in places of detention, the Constitutional Court considered at this meeting.

The Constitutional Court recognized that paragraph 6 of Art. 34 of the Law on detention **does not contradict** the Constitution of the Russian Federation. In its decision, the court noted that the state is obliged to create appropriate conditions for persons providing legal assistance for the effective implementation of

activities without prejudice to their dignity, honor and business reputation. And the UN Basic Principles on the Role of Lawyers also states that lawyers must be able to perform their professional duties without threats, hindrance, intimidation or undue interference.

"*Lawyers should not be afraid of any sanctions or be subjected to pressure when they act in accordance with professional standards*," the decision of the Constitutional Court notes.

The UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) require that convicted or remanded persons be provided with adequate facilities to meet with a lawyer, the COP points out. Although these rules make the admission of visitors to the prison facility dependent on consent to searches, they prohibit humiliating search procedures, and also prescribe that the prison administration must keep records of the activities carried out, indicating their reasons, perpetrators and results.

The federal law "On Advocacy and the Bar" also provides for the right of a lawyer to freely meet with his client in private during his detention without limiting the number of visits and their duration. However, the Constitutional Court has repeatedly noted that this law does not establish the immunity of a lawyer, and therefore does not provide for visiting a pre-trial detention center without complying with the established regime requirements.

According to the regulation on the Federal Penitentiary Service, measures to ensure regime requirements include control at the entrance and exit from the territories of places of detention, including for the purpose of detecting and seizing — in particular from lawyers — items, substances and products that are prohibited for storage by those under investigation.

"Thus, the security requirements are aimed at protecting the general (public) interest, they are a condition for maintaining law and order and the safety of suspects and defendants, staff, officials and citizens, including lawyers, located on the territory of the pre-trial detention center. As such, by their nature, these measures, including those applied to persons in connection with the performance of their professional duties, do not have the character of sanctions," the Constitutional Court clarified.

For example, the Constitutional Court has already noted in previous decisions that the search by a bailiff of a lawyer entering the court building and his belongings, if there are grounds to believe that he has objects that pose a threat to the safety of others, cannot be considered as a disproportionate restriction of rights.

This time, the Constitutional Court separately emphasized that, when heading to the territory of the pre-trial detention center, the lawyer is also obliged to present to the employees of the institution for inspection the object "with signs of a forbidden to carry" in his belongings or clothes, to which the technical means reacted or which was visually noticed.

At the same time, if this happens directly at the checkpoint and does not meet with objections from the lawyer — after all, he can simply refuse to search and leave, then it does not go beyond the usual control, which means that written fixation is needed only if a prohibited item is found.

The Constitutional Court believes that the examination of things and clothes of a lawyer in connection with suspicion of trying to bring in prohibited items has a different legal nature: such an examination can be carried out both at the checkpoint and in other premises of the pre-trial detention center.

Moreover, in this case, the lawyer cannot refuse to undergo an inspection and leave the pre-trial detention center. For the transfer or attempted transfer of prohibited items to persons held in institutions of the penitentiary system or temporary detention centers, administrative liability is provided. "Giving a person suspected of trying to bring in such an object the opportunity to leave the pre-trial detention center without hindrance and without consequences would create a risk of abuse and impunity," the Constitutional Court emphasized in its decision.

In this case, the course and results of the inspection should be recorded at the request of the lawyer, the Constitutional Court believes. "The possibility of such a requirement allows the lawyer, in particular, to respond to situations in which the search can, in his opinion, be transformed from the search of things and clothes into a personal search, regardless of the existence of legal grounds for this," the Court's decision says.

An alternative to written documentation may be to store a video recording of the search of things and clothes — at least for the period for a judicial appeal against the legality of such searches — and provide a copy of it to a lawyer, clarifies the Constitutional Court.

At the same time, the Constitutional Court considered that the case of Idiyatdinov, despite the absence of documentary fixation of his search, is not subject to revision, since no prohibited items were found on him, which means that "the procedure did not entail such negative legal consequences for him."

Why has this decision been important?

Some experts considered the decision of the Constitutional Court not strict enough, since the controversial norm provides too much leeway for the inspecting of lawyers in institutions of the penitentiary system, and therefore for abuse. So, according to the wording of Art. 34 of the Law on Detention, clothing and things are subject to inspection — that is, in fact, the SIZO employee has the right to check every document that is with the defense counsel, **Sergey Shuldeev**, lawyer at "Q&A" believes. In his opinion, in fact, this is a violation of attorney-client privilege.

A similar point of view was voiced by **Sergey Malyukin**, partner of the ZKS Law Office. "The main purpose of such an inspection is often not to seize prohibited items, but to gain access to documents from a lawyer's file, which lawyers take with them on a meeting with clients. These documents may contain confidential data important for protection," "Vedomosti" writes, citing Malyukin's words.

At the same time, there are no specific grounds in the law under which a lawyer can be subjected to a second inspection, adds **Andrey Grivtsov**, lawyer of the ZKS Law Office. "FSIN employees can use this gap as a means of pressure on a lawyer, since the "sufficient grounds to believe" specified in the law can be interpreted as they like," PRAVO.RU quotes him as saying.

Alexander Brester, adviser to the "Khoroshev and Partners" Law Office, believes that the Idiyatdinov case is "not the most egregious" in the area of respect for the rights of lawyers in secure institutions. However, it was in this case that the Constitutional Court of the Russian Federation considered the complaint and made a decision, which the lawyer generally assesses positively. Brester believes that the very fact that the Constitutional Court noted the need to store and provide lawyers with video recordings of searches is a step towards the legal community.

"Thank you very much to the Constitutional Court for this part, because here, at least with a video recording, we have resolved the issue. Because usually — even if we understood that the video was being filmed — it was very difficult to claim it on our own at the request of a lawyer. Either — if the video was "unsightly" — it broke, disappeared, disappeared, was not saved, or it was not provided. We managed to claim something through the courts, but this something was fragmentary, incomprehensible — there was no beginning, there was no end. And it was very difficult for us to build work around such a video, which we sometimes managed to get," Brester explained.