

DECISIONS OF CONSTITUTIONAL JUSTICE BODIES OF THE RUSSIAN FEDERATION: LEGAL RULE OR FORMALITY

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Abstract

The problem of execution of acts pronounced by constitutional justice bodies in Russia was raised even before the adoption of the Russian Constitution, since 1992, when the Republic of Tatarstan did not implement Resolution of the Constitutional Court of the Russian Federation No. P-RZ-I dated 13 March 1992. One can provide numerous examples of complete and timely execution of decisions of constitutional justice bodies; however, there are instances when such decisions are ignored, when their implementation is unjustifiably delayed or when the efforts to nullify their legal force are taken through the adoption of rules similar to those that were held unconstitutional. The author of this article analyses the reasons of non-implementation of constitutional review acts and proposes different solutions to this problem. The author discusses the notion and legal nature of legal positions of the Russian Constitutional Court, their correlation with decisions of the Constitutional Court and the lack of a precise mechanism for their implementation in the course of law-making and law enforcement practices. The author examines different kinds of liability imposed for non-implementation of decisions of constitutional justice bodies and proposes establishing preliminary constitutional review and administrative liability. In doing that, the author examines foreign experience of the Republic of Kazakhstan, the Republic of Belarus, the Republic of Kosovo, the Republic of Albania, and the FRG. In conclusion, the author proposes certain options for improving Russian legislation, which include, inter alia, the adoption of a law on regulatory legal acts in the Russian Federation.

The method of analysis and the method of comparison were the main scientific methods of research used. They allowed the author to highlight similarities and differences between legal rules and decisions of constitutional justice bodies, and to formulate concrete theoretical and practical conclusions and proposals necessary for further development of the Russian legal system.

Keywords: court decisions, constitutional court, constitutional justice, constitutional review, legal rule, improvement of legislation, constitutional law.

I. INTRODUCTION

Constitutional justice bodies in Russia include the Constitutional Court of the Russian Federation as well as constitutional and charter courts of the Russian constituent territories (subjects)*. Currently, there are 13

* Translator's note: Russian constituent territories (subjects) [*sub'ekty*] are parts of the federal structure of the Russian Federation, like states in the United States. These constituent territories have their own top-level laws, constitutions or

constitutional courts and 3 charter courts. Not all Russian constituent territories choose to create their own constitutional and charter courts, although the Russian Constitution vests them with such powers. Many regional governors are not determined to take such a step thereby preventing any future challenging of their laws.

However, bodies of regional constitutional justice have become an effective tool for protection of citizens' rights in the territories where they operate. When resolving social disputes, district, city or arbitrazh (commercial) courts quite frequently strictly follow the letter of the law without giving any thought to unconstitutionality of applicable legal rules. This is evidenced by a growing number of citizens' complaints. In 2010-2012, it was social issues that were dealt with in over half of adopted court decisions. Their range is wide and includes housing rights, as well as the right to medical assistance and the right to free education. A large number of cases was devoted to enforcement of active duty and former servicemen's rights.

Certainly, one can give many examples of complete and timely execution of decisions of constitutional justice bodies; however, there are instances when such decisions are ignored, when their implementation is unjustifiably delayed, and when the efforts to nullify their legal force are taken through the adoption of rules similar to those that were held unconstitutional.

Its Resolution dated 19 June 2007 No. 002/07-P on case reviewing certain provisions of Saint Petersburg Law No. 10015 "On Special Purpose Housing Fund of Saint Petersburg" dated 15 March 2006, the Saint Petersburg Charter Court held some of the reviewed provisions incompatible with the city's Charter as they allowed the transfer of housing fund's social purpose residential premises to citizens temporarily residing in residential community houses and citizens not registered as those in need of residential premises, and also allowed the transfer of residential premises in violation of the established priority order of their provision. The next day Saint Petersburg Law No. 318-57 "On Amendments to Saint Petersburg Law 'On Special Purpose Housing Fund of Saint Petersburg'" dated 20 June 2007 set out the challenged legal rules already in a version excluding any provisions held by the Court incompatible with the Charter of Saint Petersburg. This demonstrates that the city's parliament had begun the procedure for amending the Law challenged by citizens even before the Charter Court pronounced its final decision.

At the same time decisions of constitutional (charter) courts are not always duly implemented. Chairman of the Russian Constitutional Court V.D. Zor'kin noted that all Russian courts come across a common problem of insufficiently effective execution of court decisions (Zor'kin, 2010). The number of non-implemented resolutions constituted 1 in 2004, 1 in 2007, 2 in 2008, 3 in 2010, 4 in 2011, and 3 in 2012. By 2014-2015, their number was 17.¹ Here we face the violation of the right to a fair trial.

A similar situation exists, for example, in Albania, where there are frequent requests relating to consequences of non-execution of constitutional decisions. Albanians consider actions or inaction of state authorities as main reasons of non-execution of decisions of constitutional justice bodies although Constitutional Court decisions are final and binding from the moment of their publication. There are cases in Albania when the state was held liable for non-execution of decisions of the constitutional review body. Although, this was only another excuse for further non-execution of a court decision for financial reasons (Barjama, 2013).

The problem of execution of acts of constitutional judicial proceedings in Russia already was raised during the operation of the first organizational model of the Russian Constitutional Court prior to the adoption of the Russian Constitution on 12 December 1993. The Supreme Council of the Russian Federation, the highest representative body of state power at that time, and even adopted in the first reading a draft Law of the Russian Federation "On Ensuring Enforcement of Decisions of the Constitutional Court of the Russian Federation." At that time, in March 1992, the Republic of Tatarstan did not implement Resolution of the

charters (depending on the territory's status), which operate within a system of separation of jurisdictions [*vedeniye*] between federal bodies and such constituent territories.

¹ *Informatsionno-Analiticheskiy Otchet ob Ispolnenii Resheniy Konstitutsionnogo Suda Rossiyskoy Federatsii, Prinyatykh v Khode Osushchestvleniya Konstitutsionnogo Sudoproizvodstva v 2014 Godu, Podgotovlenniy Sekretariatom Konstitutsionnogo Suda Rossiyskoy Federatsii v Sootvetstvi s Pункtom 2 § 67 Reglamenta Konstitutsionnogo Suda Rossiyskoy Federatsii [Informational and Analytical Report on Implementation of Decisions of the Constitutional Court of the Russian Federation Adopted in Constitutional Judicial Proceedings in 2014 Prepared by the Secretariat of the Constitutional Court of the Russian Federation Pursuant to § 67(2) of the Rules of the Constitutional Court of the Russian Federation], available in Russian at <http://www.ksrf.ru/ru/Info/Maintenance/Informationks/Pages/default.aspx>.*

Russian Constitutional Court No. P-RZ-I dated 13 March 1992.² The Resolution held non-conforming to the RSFSR Constitution part of the Resolution of the Supreme Council of the Republic of Tatarstan "On Holding Referendum in the Republic of Tatarstan on State Status of the Republic of Tatarstan" of 21 February 1992, formulating the question in a way that the Republic of Tatarstan was an actor of international law and was forming its own relations with the Russian Federation and other republics and countries on equality-based agreements, since this was related to a unilateral alteration of national and state structure of the RSFSR and meant that the Republic of Tatarstan is not part of the RSFSR (Aleksandrova, 2014). A draft Law "On Ensuring Enforcement of Decisions of the Constitutional Court of the Russian Federation" was sent to the constituent territories (subjects) of the Russian Federation for discussion and their opinion.³ The work on the draft Law stopped at this point.

Examples of non-execution of decisions of the Russian Constitutional Court raise particular concerns. In 2007, the highest national supervisory authority within general jurisdiction court system, the Presidium of the Russian Supreme Court, refused to implement decision of the Russian Constitutional Court on application of Art. 389 of the Civil Procedure Code of the Russian Federation in its constitutional legal sense revealed by the Russian Constitutional Court with respect to the applicants who filed a motion for official interpretation of paragraphs 6, 7 and 10 of the operative part of Resolution of the Russian Constitutional Court No. 2-P dated 5 February 2007 (Lukin, 2008).

There is a considerable number of such examples on a regional level. For instance, instead of relying on Russian Constitutional Court Rulings No. 542-O of 7 December 2006 and No. 872-O-P of 1 November 2007 relating to the transfer of municipal property into ownership of a constituent territory (subject) of the Russian Federation, the Arbitrazh (Commercial) Court of the Sverdlovsk Region started providing grounds why such Rulings were not mandatory for that Court. Notably, this position was supported by the Russian Supreme Arbitrazh (Commercial) Court (Ruling of 11 March 2008) (Kryazhkov, 2008).

Another example is execution of Resolution of the Constitutional Court of the Republic of North Osetiya-Alaniya No. 4-P dated 26 December 2008 on case concerning review of Resolution of the local self-government administration Head of the city of Vladikavkaz No. 795 "On Use of Utility Premises in Residential Houses and Buildings in the city of Vladikavkaz" dated 8 July 2005 which took four years.

Decisions of constitutional justice bodies are frequently implemented only formally. Execution of the decision of the Constitutional Court of the Republic of Komi dated 15 September 2000 on case concerning review of constitutionality of Article 3(10) and note 2 to Article 12(6) of the Law of the Republic of Komi "On Unified Tax on Imputed Income for Particular Types of Activity" initiated by an application of shareholders of LLC *Komissionnye Tovary* can be a remarkable example. It was noted that the notion of "retail sales" was construed overbroadly in Article 3(10) of that Law including commission sales activity as well, thereby leading to commission sales traders being treated as payers of the unified tax, which contradicted Russian legislation. The State Council of the Republic of Komi was advised to amend the Law of the Republic of Komi "On Unified Tax on Imputed Income for Particular Types of Activity" in order to bring it in line with the federal legislation.

On 15 November 2000, the State Council of the Republic of Komi adopted the Law of the Republic of Komi "On Changes and Amendments to the Law of the Republic of Komi 'On Unified Tax on Imputed Income for Particular Types of Activity'", which eliminated paragraph 10 of Article 3. However, the same act amended Article 12 of the Law adding paragraph 6 establishing base profitability ratio for value added tax calculation

² See Postanovlenie Konstitutsionnogo Suda Rossiyskoy Federatsii ot 13 Marta 1992 g. N P-RZ-I "Po Delu o Proverke Konstitutsionnosti Deklaratsii o Gosudarstvennom Suverenitete Respubliki Tatarstan ot 30 Avgusta 1990 Goda, Zakona Respubliki Tatarstan ot 18 Aprelya 1991 Goda "Ob Izmeneniyakh i Dopolneniyakh Konstitutsii (Osnovnogo Zakona) Respubliki Tatarstan", Zakona Respubliki Tatarstan ot 29 Noyabrya 1991 Goda "O Referendume Respubliki Tatarstan", Postanovleniya Verkhovnogo Soveta Respubliki Tatarstan ot 21 Fevralya 1992 Goda "O Provedenii Referenduma Respubliki Tatarstan po Voprosu o Gosudarstvennom Statuse Respubliki Tatarstan" [Resolution of the Constitutional Court of the Russian Federation dated 13 March 1992 No. P-RZ-I "On the Case Concerning Review of Constitutionality of the Declaration on State Sovereignty of the Republic of Tatarstan of 30 August 1990, the Law of the Republic of Tatarstan 'On Changes and Amendments to the Constitution (Basic Law) of the Republic of Tatarstan' of 18 April 1991, the Law of the Republic of Tatarstan 'On Holding Referendum in the Republic of Tatarstan' of 29 November 1991, the Resolution of the Supreme Council of the Republic of Tatarstan 'On Holding Referendum in the Republic of Tatarstan on State Status of the Republic of Tatarstan' of 21 February 1992"], *available in Russian at Legal Reference System 'ConsultantPlus'*.

³ 18 VSND i VS RF [Gazette of the Congress of People's Deputies and the Supreme Council (Soviet) of the Russian Federation No.18] Art. 970 (1992).

with respect to sales under commission agreements with individuals. Thus, the amount of the value added tax applicable to commission sales goods has not changed (Gavryusov, 2001).

II. OPINION AND DISCUSSION

Legislation of a number of countries gives a definite answer to the question on legal nature of acts of constitutional review bodies. For instance, according to Article 94 of the Basic Law of the FRG a decision of the Federal Constitutional Court will have the force of law if this is directly stipulated in the legislation. Decisions of constitutional review bodies in Lithuania, Kazakhstan, Belarus, and Azerbaijan are also officially recognized as sources of law having the form of regulatory acts (Halmai, 2012).

Acts of the Constitutional Court in the Republic of Belarus are defined as regulatory. It should be specifically noted that not all acts of the Belarusian Constitutional Court have regulatory character but only those that were adopted by the Constitutional Court following the procedure of subsequent constitutional review as well as decisions adopted pursuant to the procedure of mandatory preliminary review and decisions on liquidation of legal gaps, elimination of conflicts of laws and legal uncertainty.

According to Article 2 of the Law of the Republic of Belarus "On Regulatory Legal Acts of the Republic of Belarus" acts of the Constitutional Court, as well as resolutions of the Plenums of the Supreme Court and the Supreme Economic Court, are defined as regulatory legal acts adopted within its jurisdiction (established by the Belarussian Constitution and other legislative acts adopted pursuant to it) covering regulation of social relations.

Thus, one can agree with the Belarussian legislator's position and recognize as legal rules decisions of constitutional (charter) courts on the most important issues relating to interpretation of constitutions (charters), declaration of regulatory acts' or their parts' conformity or non-conformity with constitutions (charters), and decisions adopted upon the results of resolution of jurisdictional disputes between state authorities.

It should be noted that only in certain cases decisions of the German Federal Constitutional Court have the force of law. It is the case when the compatibility of a Land's legal act to its constitution is reviewed or when an ordinary court submits an application to a Land's Constitutional Court requesting to review the compatibility of a law to its constitution, or when constitutional appeals are filed against violations of the basic rights or rights of counties, districts and local (municipal) unions by Lands' laws. These provisions do not mean that a constitutional review body performs the legislator's function; rather it is its right to evaluate the constitutionality of regulatory acts, including laws. The Constitutional Court also has a right to determine the procedure of execution of its decisions and the enforcing authorities. All this, together with other capabilities, significantly strengthens positions of the Constitutional Court in the system of the Land's state authorities. It would be useful for the Russian Federation to take into account experience of the FRG in the sphere of constitutional justice. Decisions of the Russian Constitutional Court and constitutional (charter) courts of the constituent territories (subjects) of the Russian Federation should be also assigned the force of law with respect to these categories of cases. We should understand that this is not a classical example of a legal rule, although the three-tier structure of a legal rule can be found even in a decision of a constitutional review body when needed.

Legal facts and disputed legal provisions detailed in the reasoning should be considered as a case-related hypothesis (*kazualnaya gipoteza*) of a legal rule. The way of action of respective participants of legal relations suggested by a constitutional (charter) court will be a disposition of a legal rule; and a final conclusion contained in the operative part of the decision will be its sanction. At the same time the final conclusion on constitutionality of an act can be viewed as a sanction with positive meaning.

Nevertheless, decisions of constitutional justice bodies do not undoubtedly belong to regulatory acts in their absolute entirety. A constitutional (charter) court only reveals universally binding rules of conduct through interpretation of regulatory acts, while the legislator establishes such universally binding rules of conduct. Decisions of constitutional (charter) courts clarify the meaning of reviewed regulatory acts, resolve conflicts between legal rules, and reveal systemic connections between them thereby substantially affecting legal regulation.

Furthermore, a legal position contained in the operative part of a decision, together with conclusions reached in the reasoning, becomes the ground for future legal regulation as a guiding point in the legislative process and in activity of all governmental and municipal authorities.

Therefore, legal positions possess to the greatest extent characteristics of a legal rule, they cover similar cases, can be reviewed, and are mandatory notwithstanding the type of decision they were contained in.

A similar approach exists in the Republic of Kazakhstan. Legal positions of the Constitutional Council of the Republic of Kazakhstan, in the operative part of a regulatory resolution, receive qualities of constitutional legal rules, whose structure and contents are similar to classical legal rules, i.e. norms of law.

Thus, legal positions on the meaning of constitutional rules and legislation contained in decisions of constitutional justice bodies on the most important issues, which are expressed in the operative parts of decisions and which serve as a universally binding standard of adequate understanding of the meaning of constitutional and legislative rules, are, in essence, legal rules.

III. CONCLUSION

1. The Russian legislation has seemingly reached a point where there is a need to introduce a uniform notion of the term "legal position" - used not only in constitutional law but also in other branches of law - into the legal environment.

2. One can acknowledge that nowadays there is a dual attitude towards acts of constitutional justice bodies dictated by the lack of legislative regulation of their place in the Russian legal system. We believe that it is necessary to amend the Law "On the Constitutional Court of the Russian Federation" and laws on constitutional (charter) courts of the constituent territories (subjects) of the Russian Federation to resolve this contradiction. These laws should provide that decisions of the Russian Constitutional Court and of constitutional (charter) courts of the constituent territories (subjects) of the Russian Federation on the most important issues as well as legal positions expressed therein are legal rules adopted in the process of administering constitutional justice having a special legal form and aimed at regulation of social relations. Decisions of constitutional justice bodies and legal positions are enforced through state compulsion and create, change, and terminate legal rules. Regulatory and interpretive character, generality, and obligatoriness for an indefinite range of persons are among their features.

A Law of the Russian Federation on regulatory legal acts should be adopted assigning acts of the Russian Constitutional Court and resolutions of the Plenum of the Russian Supreme Court the force of a regulatory legal act.

Therefore, it is necessary to recognize as legal rules decisions of constitutional (charter) courts on the most important issues relating to interpretation of constitutions (charters), declaration of regulatory acts' or their parts' conformity or non-conformity with constitutions (charters), and decisions adopted upon the results of resolution of jurisdictional disputes between state authorities.

At the same time this law should determine that not all decisions of constitutional justice bodies are regulatory acts. As a general rule, decisions of constitutional (charter) courts and legal positions expressed therein clarify the meaning of reviewed regulatory acts, resolve conflicts between legal rules, and reveal systemic connections between them thereby substantially affecting legal regulation.

3. The Constitutional Court of the Russian Federation should be vested with the right to revise decisions of constitutional (charter) courts of the constituent territories (subjects) of the Russian Federation through cassation proceedings. For this purpose the Federal Constitutional Law "On the Judicial System in the Russian Federation" and the Federal Constitutional Law "On the Constitutional Court of the Russian Federation" should be amended. Citizens of the Russian constituent territories should be given the right to appeal to the Russian Constitutional Court against decisions of constitutional (charter) courts when a regional constitutional review body reveals a contradictory to the Constitution "meaning of the act considered by it" or when a constitutional (charter) court has interfered into jurisdiction of state power bodies of the Russian Federation, joint jurisdiction or jurisdiction of a Russian constituent territory (subject) (Mokoseeva, 2015).

4. The Russian Constitutional Court and constitutional (charter) courts of the constituent territories (subjects) of the Russian Federation should be vested with the right to carry out preliminary constitutional review. In urgent cases constitutional justice bodies should have the right to suspend the entry into force of a law.

5. In order to ensure execution of decisions of constitutional (charter) courts it will be required, first of all, to amend the Administrative Offences Code and the regional legislation by envisaging a mechanism of administrative legal liability for non-execution, undue execution or obstruction of execution of a constitutional (charter) court decision.

In some authors' opinions, a separate law on execution of decisions of constitutional (charter) courts should be adopted (Kokotov, 2013). Creation of a mechanism of execution of constitutional (charter) courts' decisions of the constituent territories (subjects) of the Russian Federation seemingly requires a complex

approach to the solution of this problem. Legislative regulation itself becomes possible through mutual cooperation of the Constitutional Court of the Russian Federation and representatives of constitutional (charter) courts in legislative activity by means of creation of a joint commission whose initial tasks should be the development of a draft Law "On Execution of Decisions of the Constitutional Court of the Russian Federation, Constitutional (Charter) Courts, and Other Constitutional Review Bodies of the Constituent Territories of the Russian Federation" containing procedures of constitutional enforcement process and a mechanism of constitutional liability for non-execution and undue execution of decisions of constitutional review bodies, and concretizing grounds and possible sanctions. The Russian President and his Plenipotentiary Envoys to the federal circuits, respectively, should be given the role of the principal guarantors of execution of decisions of the Russian Constitutional Court and constitutional (charter) courts (Ovsepyan, 2001).

6. Experience of the Republic of Kosovo relating to the adoption by constitutional justice bodies of decisions on non-execution of their own acts and publication of such decisions seems to be disputable but quite interesting. This, in conjunction with administrative liability imposed in the form of a fine, would allow to nip the problem of non-execution in the bud.

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