

# The Role of the Constitutional Court of the Russian Federation in the Fight Against Corruption

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## ABSTRACT

Corruption is inevitable in any modern society. There are various ways to combat corruption and the main one is legal. However, legal requirements are not always specific, which gives rise to various law enforcement practices and entails a violation of human rights and freedoms or infringement of the interests of the state. In an ideal society, all laws are clear and respected by all parties to the relationship. This provides a rule of law. But the rule of law cannot function effectively if the content of legal norms is unclear or controversial. In the Russian Federation, the special body of constitutional review is the Constitutional Court of the Russian Federation, whose decisions are binding on all subjects of law and cannot be appealed. The Constitutional Court of the Russian Federation checks the compliance with the Constitution of the Russian Federation of the norms of anti-corruption laws, eliminates the uncertainty of legal norms and ensures the rule of law in the Russian Federation.

**Keywords:** *corruption, Constitutional Court of the Russian Federation, anti-corruption*

## 1. INTRODUCTION

The basic principles of anti-corruption, legal and organizational principles for preventing and combating corruption are enshrined in Federal Law of 25.12.2008 No. 273-FZ "On Combating Corruption". However, many of its provisions are unclear or controversial. So, for example, the fundamental principle of combating corruption, enshrined in Art. 3 of the mentioned Law, the principle of legality. Taking into account that the Russian parliament refrains from formalizing the laws, the only authority that can somehow determine the content of the laws is the Structural Court of the Russian Federation [11].

It is no accident that the amendments to the Constitution of the Russian Federation, submitted for public discussion on April 22, 2020, state that "the acts or their individual provisions recognized as unconstitutional lose their force ... and the acts or their individual provisions recognized as constitutional in the interpretation given by the Constitutional Court of the Russian Federation shall not be used in any other interpretation".

The main objective of the study is to analyze the decisions of the Constitutional Court of the Russian Federation regarding verification of federal laws and laws of the constituent entities of the Russian Federation adopted on anti-corruption issues. An additional goal of the publication is to establish a theoretical understanding of the principle of legality and its adaptation to anti-corruption issues.

## 2. RESULTS

Anti-corruption issues have long been among the most relevant not only for law enforcement, but also for research scientists [1–5]. This is due to the fact that corruption weakens the national security of the state, contributes to an increase in the number of offenses, as a result, the rights and legitimate interests of citizens [6], organizations are violated, enormous material damage is caused [7]. Corruption, penetrating into various spheres of the life of society and the state, leads to significant losses in the economy, reduces the trust of citizens [8], both to the institutions of power [9] and to law in general [10].

It should be noted that the concept of legality was widely studied in the Soviet period of the development of Russia. The indicated historical period of time was characterized by the definition of legality as a method of state leadership of Soviet society [12], as the strict and steady observance and enforcement of laws by all state bodies, all institutions and public organizations, officials and citizens [13]. Socialist legitimacy was understood as a regime of rigorous enforcement of laws expressing the will of the Soviet people and legal acts based on them [14]. Socialist legality was also determined through the category of "principle" (the principle of activity of the state, law, the principle of organization and activity of the mechanism of state power, the principle of activity of state bodies, public organizations, officials and citizens' behavior) [15].

## **2.1. Paper Structure**

The rest of the paper is organized as follows. First, the principles of combating corruption are outlined, as well as the legal and organizational framework for preventing corruption and combating corruption. Further, the decisions of the Constitutional Court of the Russian Federation related to the implementation of the principles indicated above are examined. The principle of legality has been studied separately.

## **2.2. Anti-corruption principles**

An attempt to combine the essential properties of socialist legality was made by the famous representative of the Ural school of law, S.S. Alekseev: "Socialist legality is a principle of law that expresses the democratic life of a socialist society and consists in the requirements of strict and rigorous observance by all subjects of laws and legal acts based on them, the full and real implementation of subjective rights, the proper, justified and effective application of law with the exception large-scale arbitrariness in the activities of state bodies and officials" [16].

S.S. Alekseev managed to identify even more accurate content of the concept of legality in one of his last works, where he writes: "It is by virtue of the normative nature of law and its other virtues that the principle of legality can be promoted and ensured. That is, not just requirements of the binding of legal norms, but such requirements of the binding of legal norms to "all persons" - to all citizens, officials, state bodies - to act in strict accordance with the law" [17].

Thus, we believe that the principle of legality should be understood as the establishment of such a regime for the implementation of the rules of law contained in laws and by-laws based on them by subjects of law. As a result of the implementation of the principle of legality, all participants in legal relations have an obligation to comply with and comply with regulatory legal requirements.

The Constitution of the Russian Federation of 1993 does not contain a definition of legality. Nevertheless, individual authors, when conducting research on the category of "legality", find it normatively enshrined in article 15 of the Constitution of the Russian Federation, which says, "State authorities, local authorities, officials, citizens and their associations are required to comply with the Constitution of the Russian Federation and laws" [18].

The conclusion that the basic, fundamental custodian of constitutional legality in the Russian Federation is the Constitutional Court of the Russian Federation does not raise any doubts and does not require any additional argumentation. This is evidenced by the provisions of the Federal Constitutional Law of 21.07.1994 No. 1-FKZ "On the Constitutional Court of the Russian Federation." Only the Constitutional Court of the Russian Federation has the right to decide cases on the compliance of the Constitution of the Russian Federation with normative legal acts. Only

he can check the constitutionality of the law applied in a specific case on complaints of violation of constitutional rights and freedoms, at the request of the courts, check the constitutionality of the law to be applied by the relevant court in a specific case, etc.

The Constitutional Court functions to protect the foundations of the constitutional order, fundamental rights and human and civil freedoms, ensuring the supremacy and direct action of the Russian Constitution. It is important to note that, in accordance with Art. 79 of the above law, public authorities and courts (after the entry into force of the decision of the Constitutional Court of the Russian Federation) must be guided by the decision of the court. The authority does not have the right to apply a normative act or some of its provisions in an interpretation that is at variance with the interpretation given by the Constitutional Court of the Russian Federation in this decision.

That is why decisions of the Constitutional Court of the Russian Federation play an important role in ensuring the principle of legality in the application of anti-corruption legislation. The legal positions set out in them orient the law enforcement and judicial authorities towards clear and strict observance of the legislation. Moreover, such compliance with the law should occur exclusively in accordance with the provisions of the Constitution of the Russian Federation [19].

## **2.3. Analysis of decisions of the Constitutional Court**

The following can be cited as an example of such decisions of the supreme body of constitutional review:

2.2.1. Resolution of the Constitutional Court of the Russian Federation of November 29, 2016 No. 26-P "In the case of checking the constitutionality of subparagraph 8 of paragraph 2 of Article 235 of the Civil Code of the Russian Federation and Article 17 of the Federal Law On control over the compliance of expenses of persons holding public office and their other income". The case was considered in connection with the request of the Supreme Court of the Republic of Bashkortostan. "In this decision, the body of constitutional control recognized the right to recover objects of movable and immovable property, securities, shares, etc., in accordance with the Constitution of the Russian Federation in accordance with the procedure of civil proceedings in the income of the Russian Federation. Such property should have belonged to the person holding the position of the state (municipal) service or his spouse and minor children. At the same time, the indicated persons did not provide information confirming the acquisition of property for legal income, as well as funds received from the sale of such property. At the same time, the Constitutional Court of the Russian Federation emphasized the need to account for all legal proceeds that were received by these persons and could be used to acquire the relevant property.

2.2.2 Determination of the Constitutional Court of the Russian Federation dated October 24, 2019 No. 2952-O "On the refusal to accept for consideration the complaint of citizen Armen Eminovich Karapetyan on violation of his constitutional rights by paragraph 31 of Article 12 of the Federal Law On General Principles of Organization of Legislative (Representative) and Executive Bodies of State Power of Subjects Russian Federation". In it, the Constitutional Court of the Russian Federation indicated that the subjects of the Russian Federation have the right, guided by the Constitution of the Russian Federation, the principles established by it, to determine the list of grounds for early termination of powers on their own. The subjects of the federation, based on restrictions and prohibitions, exercise their own legal regulation [20]. The supreme constitutional control body also noted the possibility and necessity of extending anti-corruption legislation to a citizen who assumes the post of deputy of the legislative (representative) state authority of a constituent entity of the Russian Federation, since this person, voluntarily choosing this occupation, thereby agrees to the conditions and restrictions with which the legal status acquired by him is associated.

2.2.3. The determination of the Constitutional Court of the Russian Federation of February 25, 2013 No. 334-O / 2013 "On the refusal to accept for consideration a complaint of a citizen Yury Stanislavovich Gusev on violation of his constitutional rights by parts 1, 4 and 5 of Article 12 of the Federal Law "On Combating Corruption". In the said decision, the Constitutional Court of the Russian Federation checked the constitutionality of the norm obliging the employer to "inform within ten days the representative of the employer (employer) of the state or municipal employee at the last place of his service about the conclusion of an employment or civil law contract for the performance of work (provision of services) with a citizen who replaced certain positions of state or municipal service, within two years after his dismissal from state or municipal service". The court decision said that this norm is aimed at increasing the effectiveness of the fight against corruption. And it is based on the principles of the priority application of measures to prevent corruption and the integrated use of political, organizational, informational, social, economic, legal, special and other measures to combat this phenomenon. ... Thus, this norm is focused on ensuring the security of the state, and therefore cannot be considered as violating the constitutional rights of citizens [21].

2.2.4. In the Decision of January 9, 2019 No. 1-P, the Constitutional Court of the Russian Federation assessed the constitutionality of part 1 of Article 17 of the Federal Law "On Monitoring the Conformity of Expenses of Persons Holding Public Positions and Other Persons with Their Incomes". According to this article, the Prosecutor General of the Russian Federation or prosecutors subordinate to him are obliged to apply to the court with a claim to turn property into the income of the Russian Federation if it was acquired by an employee with unconfirmed income. Such property can be: land plots, other immovable property, vehicles, securities, shares, etc.

An amount of money equivalent to the value of such property may also be recovered. The applicant in this court case was a deputy of the local representative body who, before being elected deputy, did not replace state and municipal posts, but was engaged exclusively in private entrepreneurial activity. Reporting on his income and expenses, the applicant incorrectly indicated the sources of income, which allowed the prosecutor to go to court and recover the deputy's property in the Russian Federation's income, despite the fact that the corresponding property was acquired before the citizen was elected to the municipal office. In other words, the contested norm became the subject of consideration of the Constitutional Court of the Russian Federation because it allowed transferring to the income of the Russian Federation property that was acquired by a citizen before filling his public position.

Considering the case, the Constitutional Court of the Russian Federation noted that Russia is obliged to take all necessary legal measures to combat corruption, including those aimed at preventing the illegal enrichment of persons performing public functions. At the same time, the Constitution of the Russian Federation establishes the right of everyone to own property, to own use and dispose of it both individually and jointly with other persons. And it allows the possibility of its restriction only by federal law and only to the extent necessary in order to protect the foundations of the constitutional order, morality, health, rights and legitimate interests of others, to ensure the defense of the country and the security of the state. The goals of such restrictions should be not only legally, but also socially justified, and the restrictions themselves should be proportionate to these goals.

Assuming the very possibility of restricting subjective constitutional law by federal law, the Court noted the need to use measures that were not excessive, but only necessary and strictly stipulated by these goals. The court also emphasized that in the course of such legal regulation it is unacceptable to distort the very essence of constitutional law or freedom. With regard to the right of ownership, this also means that its restrictions imposed by the federal legislator must meet the requirements of justice, reasonableness and proportionality, and cannot affect the essence of this right.

According to the legal positions of the Constitutional Court, legal responsibility can only arise: for acts that were recognized as offenses at the time of their commission; if the relevant regulation is consistent with the constitutional principles of a democratic rule of law, including the requirement of justice. If the offender's guilt is proven or presumed; if the penalty is proportionate to the violation. The legislator is obliged to respect the equality of all before the law, which means that any offense and sanctions for its commission must be clearly defined in the law, when everyone can foresee the legal consequences of their violation. The Constitutional Court of the Russian Federation indicated that the federal legislator should strive to ensure that the limits of property liability established by him, together with the rules for imposing it,

allow in each case to ensure the adequacy of the applied state coercion.

Thus, despite the fact that the Constitutional Court of the Russian Federation recognized the contested norm of Part 1 of Article 17 of the Federal Law "On Control over the Compliance of the Expenses of Persons Holding Public Positions and Other Persons with Their Incomes", which does not contradict the Constitution of the Russian Federation, it interpreted it in a special way... The court ruled out the possibility of recourse to the income of the Russian Federation of property acquired by a citizen before taking up the relevant position, requiring the provision of information on income and expenses. This approach of the Constitutional Court of the Russian Federation is based on the principles of legality and democracy and is not aimed at liberalizing anti-corruption legislation, and the latest decisions of the Constitutional Court testify to this in particular.

2.2.5. Thus, by Decision No. 3560-O of 19.12.2019, the Constitutional Court of the Russian Federation refused to accept for consideration the complaint of citizen Vladimir Nikolayevich Razgonov. The property was confiscated from the citizen and turned into income, the source of which he could not explain, although as a public official, earlier he had repeatedly and publicly informed about his income. The Constitutional Court of the Russian Federation indicated that the transfer of property to the income of the Russian Federation in this case is a special measure of legal responsibility. They are applied in case of violation of anti-corruption legislation by persons performing public functions. Such measures are aimed at effectively combating corruption and protecting constitutionally significant values, and therefore are permissible. Moreover, the procedure for applying this measure of responsibility makes it possible to ensure a balance between the public interests of the fight against corruption and the private interests of the owner who acquired the property with income not related to corruption. The existing legal mechanism does not prohibit a citizen from submitting any admissible evidence in court to confirm the legal origin of the funds spent on the acquisition of this or that property.

Thus, the court confirmed the constitutionality of the Federal Law "On Control over the Correspondence of Expenses of Persons who Fill Government Positions and Other Persons with Their Incomes", which establishes the legal mechanism of control by the state on the property status of public persons and the circulation of property to the Russian Federation. He also confirmed the legality of the seizure of property from a public person, if there is no evidence in respect of such property that confirms his acquisition of legitimate income.

6. Another significant decision of the Constitutional Court of the Russian Federation is the Decision of the Constitutional Court of the Russian Federation of 01.30.2020 No. 36-O. In this document, the Constitutional Court of the Russian Federation confirmed the important conclusion that the legislation on the prevention of corruption is more important than labor legislation. Therefore, the dismissal of officials for violation of anti-

corruption requirements is permissible and legal. Such regulation ensures that the balance of public interests and private interests of citizens serving in the state is maintained, and does not violate the rights of officials.

### 3. CONCLUSION

This is only part of the great practice of federal constitutional justice in the interpretation of anti-corruption legislation. Considering that Article 2 of the Federal Law "On Combating Corruption" does not call forth a decision of the Considering that Article 2 of the Federal Law "On Combating Corruption" does not provide for a decision of the Constitutional Court of the Russian Federation. We consider it necessary to orient all "branches" and levels of public authority to use the legal potential of judicial decisions [2]. The use of decisions of the Constitutional Court of the Federation is one of the most important means of ensuring the principle of legality in the implementation of anti-corruption measures.

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