Information with regard to the Questionnaire
for the XVIIIth Congress of the Conference of European Constitutional Courts
«Human Rights and Fundamental Freedoms: the Relationship of International, Supranational and National Catalogues in the 21st Century»

The present information was prepared by the Secretariat of the Constitutional Court of the Russian Federation in response to the Questionnaire for the XVIIIth Congress of the Conference of European Constitutional Courts (*hereinafter* – the Questionnaire). The information' structure mirrors that of the Questionnaire. It also uses the same acronyms and abbreviations as in the Questionnaire.

The information presented is not an official position of the Constitutional Court of the Russian Federation and does not bind the Court in any way.

I. GENERAL PART: CATALOGUES OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

I.I. International catalogues of human rights (ECHR, UDHR and ICCPR)

1. In your country, what is the constitutional position/characteristic/legal force of international treaties protecting human rights?

In Russian legal system international treaties are attributed primary role, along with the Constitution of the Russian Federation (*hereinafter*– the Constitution) itself, in the sphere of protection of human rights and fundamental freedoms.

Under the Russian Constitution (Section 1 of Article 1, Article 2, and Section 1 of Article 17) human rights in the Russian Federation are recognised and guaranteed and in Russian Federation the rights and freedoms are recognised in accordance with universally recognised principles and norms of international law. These principles and norms as well as international treaties of the Russian Federation related to human and citizen's rights and freedoms, have priority within the national legislation (Section 4 of Article 15 of the Constitution). At that, the Constitution of the Russian Federation is hierarchically dominant in the State legal system, therefore in the event of collision between the norms of an international treaty and the Constitution the latter unconditionally prevails pursuant to its Article 15 (Section 1).

The Universal Declaration of Human Rights (*hereinafter* – UDHR) of 1948,[1] adopted as the UN GA Resolution, is a recommendation by nature, and is therefore not a legally binding act. At the same time the UDHR provisions are perceived as reflecting basics of customary international law, and as such acquire binding force. The main provisions of the UDHR were mirrored in the Constitution of the Russian Federation.

The International Covenant on Civil and Political Rights of 1966 (*hereinafter* – the ICCPR)[2] and additional Protocols thereto[3] are international treaties that impose certain obligations on the States that acceded to them (ratified them), including the obligation to guarantee access of their citizens to supranational judicial bodies.

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[1] Universal Declaration of Human Rights adopted by of the UN General Assembly Resolution 217 A (III) of 10 December 1948. Published in "Russian Gazette", no. 67 of 5 April 1995, of 10 December 1998.

[2] International Covenant on Civil and Political Rights, adopted on 16 December 1966 by Resolution 2200 (XXI) on the 1496 Plenary Session of the UN General Assembly, ratified by Decree of Presidium of the Supreme Soviet of the USSR of 18 September 1973 no. 4812-VIII with a declaration. This document came into force and became binding for the USSR as of 23 March 1976. Published in Supreme Soviet of the USSR Journal on 28 April 1976 no. 17, art. 291, Supreme Court of the Russian Federation Bulletin no. 12, 1994.

[3] Optional Protocol to the International Covenant on Civil and Political Rights, adopted on 16 December 1966 by Resolution 2200 (XXI) on the 1496 Plenary Session of the UN General Assembly. The USSR has acceded to the Optional Protocol with a declaration (Act of the Supreme Soviet of the USSR of 5 July 1991 no. 2304-1). This document became binding for the Russian Federation on 1 January 1992 (International Treaties Bulletin, no. 1, 1993).

Convention for the Protection of Human Rights and Fundamental Freedoms[4] (*hereinafter* – the Convention, the ECHR) was ratified under the Federal Law of 30 March 1998 no. 54-FZ and came into force for the Russian Federation on 5 May 1998 (on the date of depositing of ratification instrument with the Secretary General of the Council of Europe in accordance with Article 59 of the Convention). Pursuant to Section 4 of Article 15 of the Constitution of the Russian Federation the Convention is a part of the national legal system as an international treaty that has priority over internal legislation. It follows from this and from the Federal Law on ratification of the Convention that the Russian Federation recognised compulsory jurisdiction of the European Court of Human Rights (*hereinafter* – the ECtHR, European Court) in matters concerning interpretation and application of the Convention, and undertook to abide by final decisions of the ECtHR in cases to which the Russian Federation is a party. At that, in accordance with the Constitution (Articles 15 and 17) the Convention provisions in fact play a role of a constitutionally provided supranational remedy for human rights violations.

2. What mechanism is used to invoke the international treaties in national court decision-making?

Order of preparation, ratification and effect of treaties are regulated by the Federal Law of 15 July 1995 no. 101-FZ "On International Treaties of the Russian Federation".

Those international treaties of the Russian Federation which subject is concerned with fundamental rights and freedoms have to be ratified. The State Duma of the Federal Council of the Russian Federation (lower chamber of the Parliament) approves a law on ratification of an international treaty and passes it to the Council of the Federation of the Federal Council of the Russian Federation (upper chamber of the Parliament) for further consideration. After approval by the Federal Council of the Russian Federation a law on ratification of an international treaty is in accordance with the Constitution passed to the President of the Russian Federation for signature and publication. Under a law on ratification of an international treaty the President of the Russian Federation signs and seals the ratification instrument, which is also signed by the Minister of Foreign Affairs of the Russian Federation.

The international treaties in force, accession to which was expressed by the Russian Federation in the form of Federal Law, are officially published, upon submission of the Ministry of Foreign Affairs of the Russian Federation, in the "The Collected Legislation of the Russian Federation".

Those provisions of the officially published international treaties of the Russian Federation that do not require issuing internal acts for their enforcement, have immediate effect in the Russian Federation. In order to enforce other provisions of the international treaties of the Russian Federation relevant legal acts are issued.

It is noted that after the breakup of the Soviet Union in December 1991 the Russian Federation has fully incurred the obligations of the USSR.[5] Therefore the international treaties in force that were concluded by the Soviet Union are the part of the Russian Federation legal system, as in their respect the Russian Federation continues to carry international rights and obligations of the USSR as its successor State. The relevant international treaties of the USSR are published in the official periodicals of the Supreme Soviet of the USSR and of the Council of Ministers (Cabinet) of the USSR.

It follows from Sections 3 and 4 of Article 15 of the Constitution of the Russian Federation and para 3 of Article 5 of the Federal Law "On International Treaties of the Russian Federation" that the courts can directly apply those international treaties in force that were officially published in "The Collected Legislation of the Russian Federation", International Treaties Bulletin, or on the Official Internet-Portal for

[4] Convention for the Protection of Human Rights and Fundamental Freedoms concluded in Rome on 4 November 1950 (The Collected Legislation of the Russian Federation, 8 January 2001 no. 2, art. 163; International Treaties Bulletin, no. 2, 2001).

[5] The Russian concept of the State-successor fully incurring obligations of the USSR was supported by decision of the CIS Council of 21 December 1991, the President of the Russian Federation on 24 December 1991 applied with the UN Secretary General indicating that the Russian Federation continues membership in the UN and its international organizations.

legal information (www.pravo.gov.ru) in the order established by Article 30 of the said Federal Law.

Moreover, over time the international treaties' provisions can become a constitutional law regulation instrument as the result of the Constitutional Court of the Russian Federation work. For example, the Constitutional Court *de facto* removed the reservations made by the Russian Federation upon ratification of the ECHR, related to temporary retaining of extra-judicial arrest and detention (including measure of restraint in the form of preliminary detention) under provisions of Russian Criminal Procedural Code and Disciplinary Code of the Russian Armed Forces in force at the time.[6] The legislator enforced the relevant decisions by introducing changes to these normative acts. In the framework of Protocol no. 6 to the Convention concerning the abolition of death penalty (despite this Protocol not being ratified by the Russian Federation) and Protocol no. 13 concerning the complete abolition of death penalty in all circumstances (despite this Protocol not being either signed or ratified by the Russian Federation) the Constitutional Court delivered the decision[7] confirming the impossibility to apply capital punishment, including in cases when a guilty sentence was pronounced on the basis of a guilty verdict made by a jury trial.

Presently the Russian procedural legislation provides possibility to review judicial decisions in connection with which the European Court delivered judgments establishing violation of the Convention provisions by the Russian authorities. This procedure is foreseen as method to implement the ECtHR judgments and accordingly to "introduce" the Convention mechanism into the Russian legal system.

3. Is it possible to invoke the direct effect of the international catalogues of human rights? If so, please describe the mechanism.

Two main ways to invoke international human rights catalogues can be discerned in Russian legal system.

The first way is described as using the norms reflected in human rights catalogues by Russian courts. This way can by illustrated by the Ruling no. 5 adopted by the Plenum of the Supreme Court of the Russian Federation on 10 October 2003 "On Application by the Courts of General Jurisdiction of Universally Recognised Principles and Norms of International Law and International Treaties of the Russian Federation". In this Ruling of the Plenum the Supreme Court underlined that international treaties that have direct and immediate effect in the legal system of the Russian Federation are applicable by all the courts upon consideration of criminal, civil and administrative cases, in particular:

- upon consideration of civil cases, where an international treaty of the Russian Federation establishes different rules than a Russian law regulating relations that became subject to a court consideration;

- upon consideration of civil and criminal cases, where an international treaty of the Russian Federation establishes different rules of judicial procedure than civil procedural or criminal procedural law of the Russian Federation.

Since the Russian Federation is a party to the Convention for the Protection of Human Rights and Fundamental Freedoms and recognises jurisdiction of the European Court in matters concerning the interpretation and application of the Convention and Protocols thereto, the said Ruling of the Plenum foresees that application of the Convention by courts should be made with due regard to the ECtHR practice in order to avoid any violation of the Convention for the protection of Human Rights and Fundamental Freedoms.

The Constitutional Court of the Russian Federation also widely uses norms of international law in its work. Its decisions (Judgments) contain references to Universal Declaration of Human Rights, International Covenant on Civil and Political Rights and the Optional Protocol thereto, Convention for the Protection of

[6] Constitutional Court Judgment of 14 March 2002 no. 6-P.
[7] Constitutional Court Decision of 19 November 2009 no 1344-O-R.

Human Rights and Fundamental Freedoms, the European Social Charter, conventions of the International Labour Organisations etc.

The second way to implement international catalogues of human rights is connected with application to international bodies defending human rights and freedoms. In case of all the national legal remedies have been exhausted everyone is entitled, in accordance with the international treaties of the Russian Federation, to lodge an application with to an interstate body for the protection of human rights and freedoms (part 3 of Article 46 of the Constitution). The condition to exhaust all available internal legal remedies before applying to an interstate body for the protection of human rights and freedoms means that such an application can be lodged after all the levels of national judicial system have refused complaints of a person(applicant). The constitutional judicial procedure is not considered to be the remedy that has to be exhausted before applying to such body.

One of such interstate bodies, application to which may serve as basis to invoke an international catalogue of human rights, is the United Nations Human Rights Committee created in accordance with the International Covenant on Civil and Political Rights of 1966. The Committee considers individual applications from persons who allege that any of their rights enshrined in the Covenant had been violated by State. An application is accepted for consideration if the relevant issue is not under consideration under any other international procedure, and if a person has exhausted all internal legal remedies available, save for situations where usage of such remedies is unreasonably prolonged. Upon the results of consideration the Committee communicates its position to the State and the applicant. Such position is advisory in nature. According to statistical data published on the official website of the Committee, as of 2016 there were 50 applications of the Russian Federation citizens pending before it, one of which was recognised as admissible.[8] In 2017 there were 11 new applications registered,[9] with 19 more in 2018[10] and 10 – in 2019.[11]

The ECHR has its own mechanism that includes compulsory jurisdiction of the European Court and supervision over execution of its judgments performed by the Committee of Ministers of the Council of Europe. Under paragraph 1 of Article 46 of the Convention final judgments of the European Court in respect of the Russian Federation are binding for all the Russian State authorities, including the courts. This remedy is apparently the most popular among interstate mechanisms of human rights protection. According to statistical data published on the ECtHR website, as of 30 June 2019 there were 13 000 applications against the Russian Federation pending before this Court.[12] From ratification of the Convention by the Russian Federation in 1998 to 31 December 2018 the Court has delivered 2501 judgments in respect of the Russian Federation.[13] In order to execute these judgments the Russian Federation authorities pursue both individual and general measures, including those aimed at improvement of its own legal system.

I.II Supranational catalogues of human rights (the Charter)

The Russian Federation is not a member of the European Union, hence the provisions of the Charter are not obligatory for it, and therefore information under this head is not provided.

I.III National human rights' catalogues

1. Is the catalogue of human rights part of the constitution of your country? If so, how is it incorporated (a separate constitutional charter, a part of the Constitution, a part of the constitutional

[8] https://www.ohchr.org/Documents/HRBodies/CCPR/StatisticalSurvey.xls
[9] https://www.ohchr.org/EN/HRBodies/CCPR/Pages/TableRegisteredCases.aspx
[10] https://www.ohchr.org/Documents/HRBodies/CCPR/RegisteredCases2018.docx
[11] https://www.ohchr.org/Documents/HRBodies/CCPR/RegisteredCases2019.docx
[12] Pending applications allocated to a judicial formation at https://www.echr.coe.int/Documents/Stats_pending_month_2019_BIL.pdf
[13] Violations by Article and by State 1959-2018 at https://www.echr.coe.int/Documents/Stats_violation_1959_2018_ENG.pdf

order)? What is its structure?

The catalogue of basic human rights is an integral part of the Constitution of the Russian Federation, as well as of constitutions (charters) of the constituent entities of the Russian Federation, as the issues related to protection of human rights fall within the joint jurisdiction of the Russian Federation and constituent entities of the Russian Federation under the federal Constitution (item "б", Section 1 of Article 72 of the Constitution of the Russian Federation).

The catalogue of human rights in the Constitution of the Russian Federation takes form of a separate Chapter II "Human and Civil Rights and Freedoms". Other parts of the federal Constitution (Preamble and Chapter III "The Federal Structure") reflect this catalogue as a set of principles and basic norms, defining the meaning, contents and guarantees for provision of basic rights and freedoms. In particular, the value of human rights and freedoms is enshrined in the preamble and Article 2 of the Constitution (Chapter I "The Basis of the Constitutional System"); regulation of human and civil rights and freedoms fall within jurisdiction of the Russian Federation and their protection – within the joint jurisdiction of the Russian Federation and its constituent entities (item "в" of Article 71, and item "б" of Section 1 of Article 72 – Chapter III "The Federal Structure"); the same Chapter provides that the Russian Federation guarantees the rights of indigenous small peoples (Article 69).

Provisions of the Constitution concerning basic human rights have special position in the Constitution. It attaches special importance to the basis of constitutional system, including basics of fundamental rights and freedoms (Section 2 of Article 16), prohibits revision of basis of constitutional system and human rights and freedoms (Section 1 of Article 16, Article 64 and Section 1 of Article 135), asserts priority of fundamental human and civil rights and freedoms and of the basis of constitutional system over international treaties of the Russian Federation (Article 79).

The structure of fundamental rights' catalogue includes principles of human rights (Articles 17 – 19), catalogue of civil (personal) rights (Articles 20 – 29), catalogue of political rights (Articles 30 – 33), catalogue of economic rights (Articles 34 – 36), catalogue of social rights (Articles 37 – 43), catalogue of cultural rights (Article 44), catalogue of the rights to legal protection (Articles 45 – 56) and catalogue of guarantees of implementation of the rights (Articles 60 – 63).

2. What is the historical background of the creation of the national catalogue of human rights in your country? Is the respective legislation in your country based on other legislation (previous or foreign), or is it original?

The catalogue of fundamental human rights enshrined is the Constitution of the Russian Federation came as the result of democratic reforms that took place during the late 80-s and early 90-s of the XX century, reflected also in such basic instruments as the Declaration of Human and Civil Rights and Freedoms, approved by the USSR Supreme Council resolution of 22 November 1991 no. 1920-I, or changes to the 1978 Constitution of the Russian SFSR, foreshadowing adoption of the Constitution of the Russian Federation of 1993, which in turn embraced the key achievements of that time in the fields of democracy and human and civil rights and freedoms. This catalogue of fundamental rights is crucially different from the catalogue of rights encompassed in the Soviet constitutions. Thus, it should be seen as an original one for the Russian Federation, reflecting results of democratic forces and citizens struggle for their rights.

3. What has been the development of your national catalogue of human rights over time? Is it undergoing a change? Are new rights included? Is there a constitutional procedure for its modification or amendment?

Given the fundamental importance of the Constitution of the Russian Federation provisions, no

changes are possible to the text of the human and civil rights and freedoms catalogue (Section 1 of Article 135). At the same time, the federal Constitution guides the State to constant improvement of human rights ensuring, and accordingly to the rising of human rights standards (Sections 1 and 2 of Article 55). In order to strengthen these standards the State is obliged to use both national means of legal regulation and ensuring human rights (Articles 45, 46, 71 item "в", 72 Section 1 item"б", 76, 125, 126), and international law means of regulation and protection of human rights (Section 4 of Article 15, Section 1 of Article 17, Section 3 of Article 46). If internal and international standards are competing, the preference is made in favour of the highest standard (Section 4 of Article 15, Section 1 of Article 17, Section 1 of Article 55)[14]. At the same time the interpretation of an international treaty of the Russian Federation by an interstate body must not be in collision with the understanding of fundamental rights and freedoms enshrined in the Constitution of the Russian Federation.[15]

Requirements of the mentioned Constitution provisions oblige the State to develop in an evolutionary manner the human rights standards in its legislation and law-enforcement practice, by using effective mechanisms of protection of fundamental rights. Accordingly, since the catalogue of basic rights was approved in the Constitution 1993 substantial changes occurred in development of human rights standards. A major stage of this development was marked by the 1998 accession of the Russian Federation to the Convention for the Protection of Fundamental Rights and Freedoms with recognising jurisdiction of the European Court and binding force of its judgments.

I.IV The mutual relationship between different catalogues of human rights

1. Can you give examples from the case law of your court related to the use of any of the international catalogues?

Decisions of the Constitutional Court of the Russian Federation contain references to different catalogues of human rights. Among the many examples of these catalogues are the Universal Declaration of Human Rights,[16] International Covenant on Civil and Political Rights,[17] International Covenant on Economic, Social and Cultural Rights,[18] conventions of the International Labour Organisation (hereinafter – the ILO),[19] Geneva Conventions on humanitarian law,[20] European Convention for the Protection of Human Rights and Fundamental Freedoms,[21] European Social Charter,[22] Convention on Standards for Democratic Elections and Electoral Rights and Freedoms in CIS Member States.[23] Reference to a certain catalogue that embodies particular group of rights depends on concrete characteristics of the case considered.

Thus, upon examination of provisions of the labour legislation and legislation on social protection

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[14] Constitutional Court Judgment of 30 November 2000 no. 15-P.

[15] Constitutional Court Judgment of 19 April 2016 no. 12-P.

[16] Constitutional Court judgments of 11 April 2019 no. 17-P, of 11 February 2019 no. 9-P, of 16 November 2018 no. 43-P, of 12 November 2018 no. 40-P, of 25 October 2018 no. 38-P, of 28 June 2018 no. 26-P etc.

[17] Constitutional Court Judgments of 16 November 2018 no. 43-P, of 9 November no. 39-P, of 23 July 2018 no. 35-P, of 22 January 2018 no. 4-P, of 21 November 2017 no. 30-P, of 14 November 2017 no. 28-P etc.

[18] Constitutional Court Judgments of 11 April 2019 no. 17-P, of 11 February 2019 no. 9-P, of 25 October 2018 no. 38-P, of 28 June 2018 no. 26-P, of 27 March 2018 no. 13-P, of 7 December 2017 no. 38-P etc.

[19] Constitutional Court Judgments of 14 November 2018 no. 41-P, of 25 October 2018 no. 38-P, of 5 December 2017 no. 36-P, of 8 December 2015 no. 31-P, of 11 November 2014 no. 29-P, of 21 March 2014 no. 7-P etc.

[20] Constitutional Court Judgments of 28 June 2007 no. 8-P, of 31 July 1995 no. 10-P.

[21] Constitutional Court Judgments of 17 January 2019 no 4-P, of 11 January 2019 no. 2-P, of 9 November 2018 no. 39-P, of 23 July 2018 no. 35-P, of 6 July 2018 no. 29-P, of 29 May 2018 no. 21-P etc.

[22] Constitutional Court Judgments of 11 April 2019 no.17-P, of 25 October 2018 no. 38-P, of 28 June 2018 no. 13-P, of 24 October 2013 no. 22-P, 6 December 2012 no. 31-P etc.

[23] Constitutional Court Judgments of 15 November 2018 no. 42-P, of 25 October 2018 no. 38-P, of 10 July 2017 no. 19-P, of 5 July 2017 no. 18-P, of 13 April 2017 no. 11-P.

the Constitutional Court made references to international legal acts establishing human rights standards in the relevant sphere. Along with universal and regional standards of general nature (UDHR, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights and the Convention) the Constitutional Court develops its legal positions also with due account of other documents of UN and its specialised institutions, first of all the International Labour Organisation (the ILO) as well as Council of Europe acts, where contents of basic international legal norms is elaborated towards certain categories of persons or concrete types of legal relations. For example, a number of legal positions of the Constitutional Court were developed on the basis of provisions of Convention on the Rights of Child[24], Convention on the Rights of Persons with Disabilities[25] and the ILO conventions.[26]

When the Constitutional Court ruled on the constitutionality of Labour Code provisions granting an employee the right to obtain monetary compensation for accrued vacation upon termination of his or her working contract (para 1 of Article 127 of the Labour Code) and establishing a time-limit for lodging an application to the court to resolve the labour dispute (Article 392.1 of the Labour Code), the Court made reference in its Judgment of 25 October 2018 no. 38-P to Article 24 of the UDHR, Article 7 of the International Covenant on Economic, Social and Cultural Rights, Article 2 of Chapter II of the European Social Charter as well as to items 1 and 3 of Article 3, Article 7, item 1 of Article 10 and Article 12 of the ILO "Holidays with Pay Convention" no. 132.

The ECHR possesses its own human rights protective mechanism including compulsory jurisdiction of the European Court. Therefore, the legal positions of this Court, containing interpretation of the relevant Convention provisions, have to be taken into account during examination of similar cases by the Constitutional Court.

Thus, in its Judgment of 24 October 2013 no. 22-P the Constitutional Court of the Russian Federation ruled on the constitutionality of provisions of the Federal Law "On the Trade Unions, their Rights and Guarantees of their Activity" as regards the right of the trade union to independently define its internal structure. In this Judgment the Constitutional Court referred to provisions of the UDHR, the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms, providing everyone with a right to create trade unions and to join them in order to protect ones interests. Legal positions of the ECtHR were also cited, according to which the right to create trade unions and to join them, as defined in para. 1 of Article 11 of the Convention, represents one form or a special aspect of freedom of association (judgments in the cases of *National Union of Belgian Police v. Belgium*, no. 4464/70; *Swedish Engine Drivers Union v. Sweden,* no. 5614/72; *Young, James and Webster v. United Kingdom*, nos. 7601/76 and 7806/77; *Danilenkov and Others v. Russia*, no. 67336/01) and that the way in which national legislation enshrines the freedom of assembly and its practical application by the authorities reveal the state of democracy in the country concerned (judgment in the case of *Sidiropoulos and Others v. Greece*, no. 26695/95).

The Constitutional Court of the Russian Federation has also numerous times referred to international law instruments (human rights catalogues) when considering cases related to spheres of criminal law and criminal procedural law.

Thus, in its Judgment of 2 February 1999 no. 3-P the Constitutional Court prohibited execution of capital punishment in conditions when jury trial is unavailable to citizens in at least one of the Russian Federation constituent entities, since the right of an accused to have his case heard by a court with participation of a jury panel is a special criminal procedural guarantee of judicial defence of the right to life

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[24] Constitutional Court Judgments of 6 February 2009 no. 3-P, of 22 November 2011 no. 25-P, of 15 December 2011 no. 28-P, of 18 July 2013 no. 19-P, of 15 October 2013 no. 21-P, of 27 June 2017 no. 17-P, of 13 December 2017 no. 40-P, of 27 March 2018 no 13-P etc.

[25] Constitutional Court Judgments of 1 July 2014 no 20-P, of 27 June 2017 no 17-P, of 26 February 2018 no 10-P.

[26] Constitutional Court Judgments of 15 March 2005 no. 3-P, of 22 March 2007 no. 4-P, of 9 July 2009 no. 12-P etc.

under the Constitution, and all citizens are equal before law and court. Subsequently in its Decision on clarification of this Judgment the Constitutional Court indicated that a long-term complex moratorium exists imposed on the capital punishment execution, based on a system of legal sources (the Constitution norms in force, international legal obligations of the Russian Federation) and legitimised by a long standing judicial and legal custom. In essence a special constitutional law regime exists, that includes stable guarantees against execution of capital punishment. More detailed information in this regard can be found below in Section II.I "Right to life" of the present information.

Subsequently in its Judgments of 19 April 2010 no. 8-P and of 20 May 2014 no. 16-P the Constitutional Court gave examples of relations between the right to have the case examined by a court with participation of jury (as the right belonging to the "secondary" catalogue of rights) and everyone's right to judicial defence and to fair trial (as the right belonging to the catalogue of fundamental and inalienable rights).

The Constitutional Court in particular stated the following: in context of legal regime evolved in the Russian Federation the examination of criminal case with participation of jury cannot be seen as inherent condition of realisation of the accused *right to judicial defence as a fundamental and inalienable right* guaranteed by the Constitution – given that within the said legal regime there is an irreversible process, conditioned *inter alia* by international legal trend and obligations incurred by the Russian Federation, aimed at abolition of capital punishment – the changes that can be made by the federal legislator within its discretionary powers to regulation of jury trial criminal jurisdiction cannot be seen as limiting the access to justice and interfering with the essence of the *right to fair trial* as defined by the Constitution of the Russian Federation. At the same time the discretionary powers of federal legislator to regulate legal relations determining realisation of the right of access to court and the right to a fair trial are not absolute, these powers do not free the legislator from the duty to take due account that, as follows from Section 2 of Article 20, Section 5 of Article 32, Section 2 of Article 4 and Section 4 of Article 123 of the Constitution of the Russian Federation, special importance of constitutional law nature is attached to judicial proceedings with participation of jury (where the jury panel and not a professional judge independently decides whether the accused in guilty); therefore when clarifying constitutional requirements related to court proceedings with participation of jury as a lawful court composition in certain categories of criminal cases and excluding applicability of this type of proceedings to some crimes (to which it previously was applicable), the legislator must not act arbitrarily, its actions should be based recognition that different procedural forms of judicial protection (remedy) are conditioned by the obligation of State to secure effectiveness of judicial remedy forms, the balance of constitutional values and the principle of legal certainty, to unconditionally guarantee equality of everyone before the law and the court.[27]

The Constitutional Court often refers to international catalogues of human rights and the international courts practice when considering the cases connected to defence of property rights.

For example this occurred in its Judgment of 22 June 2017 no. 16-P upon application of A.N. Dubovets, whose living quarters (bought from another person who apparently acquired the property that was thought to be heirless estate in possession of public entity) were vindicated from him and turned to possession by a public entity as heirless property. The Constitutional Court of the Russian Federation indicated that where a public entity is an owner of heirless estate and exercises control over it by itself or through competent authorities, the disregard of principles of reasonableness and diligence by this owner should not interfere with property and personal rights of citizens in particular of *bona fide* purchasers of living quarters. The Constitutional Court of the Russian Federation, as previously the ECtHR in similar cases, has pointed out the importance of State registration of real estate property rights: when relevant disputes are resolved substantial importance should be attached to the fact of State registration of real estate rights in respect of the disputed property to a person who had no right to alienate it as well as to evaluation

[27] Constitutional Court Judgment of 19 April 2010 no. 8-P, Constitutional Court Decision of 28 June 2012 no. 1274-O.

of actions (omission) of public entity – owner of the property represented by authorised authorities entrusted with formalisation and management of heirless estate; other approach would mean unfair restriction and infringement of *bona fide* buyers, leading to violation of constitutional guarantees of property rights and right to respect of home. The Constitutional Court made references to the ECtHR interpretation of Article 1 of Protocol no. 1 to the Convention, establishing right to respect of private property, given in judgments *Beyeler v. Italy*, no. 33202/96, *Gladysheva v. Russia*, no. 7097/10, *Kirillova v. Russia*, no. 50775/13, *Alentseva v. Russia*, no. 31788/06 etc.

In its Judgment of 17 January 2013 no. 1- P the Constitutional Court came to a conclusion that the legislative provisions that established significant amount of minimal administrative fine, did not allow to impose a fine in the amount smaller than this threshold, and thus to take into due account financial situation of administrative offender, were not in conformity with the Constitution of the Russian Federation, in particularly with its Article 35 (parts 1-3). The Constitutional Court referred to the ECtHR findings in the case of *Mamidakis v. Greece*, no. 35533/04, where the latter formulated the position that financial obligation following from the fine payment, if it imposes excessive burden on the person concerned or significantly affects his or her financial situation may undermine the right to respect of property.

All in all, supporting legal positions of the Constitutional Court with such arguments contributes to "constitutionalising" of human rights enshrined in catalogues approved by international obligations of the Russian Federation, facilitates their closing in from the legal consequences point of view with acts of constitutional importance.

Examples of using international law catalogues in the practice of the Constitutional Court (including those in other spheres of relations) are given below in section II «Special part – specific issues related to selected fundamental rights».

2. Has your court considered the relationship/hierarchy/competition of the catalogues of human rights in light of the protection afforded?

Competitive and conflicting contact between different human rights catalogues in the national legal system is prevented by normative condition, formed of, on the one hand, by constitutional recognition of international obligations as integral part of the national legal system prevailing over internal legislation, and, on the other hand, of constitutional acceptance of fundamental value of human rights and freedoms along with the necessity to guarantee them in accordance with universally recognised principles and norms of international law.

The said constitutional provisions *ipso facto* presume not only "external" consistency of international obligations with the basics for public order, constitutional order etc., but also their internal consistency that includes harmony between different catalogues of human rights secured by similarity of their content (essential similarity with diversity of definitions and classifications), or mutually reinforcing amalgam of different catalogues' contents.

Since there are no conflicts between constitutional and conventional catalogues of human rights, it follows that there are no substantial differences between systems of protection of constitutional and conventional rights. Therefore execution of judgments of interstate bodies for the protection of human rights is a constitutional obligation of the public authorities (on condition that such execution does not break fundamental basics of the constitutional order).

The *presumption of consistency and integrity of international obligations*, present overall in the Russian law enforcement practice, prevents conflicting and competitive contact between different catalogues of human rights, as well as their contradiction in the constitutional jurisprudence.

Since international obligations, including those in the human rights field, are recognised by the Constitution of the Russian Federation as a part of the national legal system (prevailing, furthermore, over internal legislation except the Constitution), the implementation of Convention standards reflected in the

convention catalogues, cannot contradict with constitutional provisions. Thereby it follows from the Constitution provisions that all the international obligations incurred have to be fully respected. It follows from the same principle that it is impossible to give such interpretation of the constitutional text that would allow (1) collision between different catalogues of human rights and (2) construction of their hierarchical relations with the aim to avoid such collision.

Being included in the national legal system the catalogues of human rights form a national human rights protection standard. International practice shows that it is impossible to include situations (however rarely they occur) when following the approaches subsequently expressed in decisions of certain convention control organs (in terms of the Russian legislation – «interstate bodies for the protection of human rights»), may lead to lowering of the protection level afforded by the national standard, including situations this standard is considered not in respect of the rights of individual seeking protection, but in respect of the system of rights and freedoms of citizens, as established by Section 3 of Article 17 of the Constitution which prohibits to violate rights and freedoms of others in realisation of one's own rights.

These observations found concrete embodiment in the Judgment of the Constitutional Court of the Russian Federation of 14 July 2015 no. 21-P. In this decision the Constitutional Court pointed out that realisation of individual and general measures following from the decision of interstate bodies for the protection of human rights can be performed in accordance with Constitution provisions in this respect (Section 4 of Article 15), i.e., firstly, on the grounds of recognising such decision an integral part of the national legal system, and secondly, proceeding from unconditional priority of the Constitution norms over any other sources of law within this system.

As long as decision of an interstate body interprets the conventional provisions in contradiction with the Constitution provisions, including those in their interpretation by the Constitutional Court, such decision forfeits its enforceability (either in full or in part), thus it cannot be executed within the national legal system.

Therefore, there can be no discrepancies between international treaty on human rights (e.g. the Convention) and the Constitution of the Russian Federation, but collision may occur between interpretation of a convention provision given by the supervision interstate body acting on the basis of such treaty, and the Constitution provision.

The Constitutional Court paid special attention that such collisions are exceptional, and its detection, enabling full or partial refusal to execute decision of an interstate body, is possible only upon the results of constitutional judicial procedure. Eliminating the uncertainty as regards conformity with constitutional provisions of execution of decision of an interstate body for the protection of human rights is possible by way of interpreting the relevant provisions by the Constitutional Court upon request of the competent bodies. Proceeding from the above legal positions, the legislator entrusted the Constitutional Court with verification of constitutionality of individual and general measures that should be executed on the basis of decision rendered by the ECtHR upon the request of the relevant federal executive body, which is the Ministry pf Justice, according to the established practice.

In the described context "the right to object" should be seen as a dialogue between an interstate body for the protection of human rights and States that created it, on the matters of interpretation of the convention norms, and at the same time – as one of the forms of supervision over observance of the subsidiarity principle, i.e. supervision over proper performance of functions granted to the interstate body with the aim to prevent its acting *ultra vires*, beyond obligations incurred with ratification of the relevant agreement (e.g. as the result of increasing "autonomy" of the terms used by such body) which would also result, among other consequences, in the risk of collision between certain international obligations of a state.

Therefore, the Constitutional Court discerns the commitment of the Russian Federation to its convention obligations (manifested in proper discharging its international obligations) as complying with requirement reflected in the text of the Constitution, and in its decisions proceeds from principal

impossibility of conflict between different catalogues of human rights enshrined in conventions securing international obligations of the Russian Federation; nevertheless, the Constitutional Court does not exclude that situations may occur when a concrete decision of interstate bodies for the protection of human rights cannot be executed in accordance with the Constitution of the Russian Federation.

The power of the Court to determine on request of the competent State bodies whether it is possible to execute a certain judgment of the interstate body for the protection of human rights, as well as to define ways of such execution complying with the Constitution of the Russian Federation, can be invoked only in exceptional circumstances, as a last resort method under the Constitution – like its self-defence from supranational interpretation of convention provisions diverging from the Constitution provision. The practice of its application is very limited, but it demonstrates the intention of the Constitutional Court to seek for constitutionally acceptable and lawful compromise in execution of "problematic" judgments of the ECtHR – i.e. the intention to continue the dialogue.

Thus, the Constitutional Court Judgment of 19 April 2016 no. 12-P determined the constitutionally compliant order of execution of the European Court judgment in *Anchugov and Gladkov v. Russia* (nos. 11157/04 and 15162/05). The European Court judgment established a violation of Article 3 "Right to free elections" of Protocol no. 1 to the Convention in connection with the Russian Federation legislative restriction of electoral rights of persons convicted by a court sentence. Such decision of the ECtHR directly contradicts Section 3 of Article 32 of the Constitution of the Russian Federation, according to which citizens who are kept in places of imprisonment under a court sentence shall not have the right to elect and be elected.

In its Judgment the Constitutional Court of the Russian Federation observed a certain development in the interpretation of electoral rights essence by the ECtHR who numerously pointed out their "modern" understanding in "the XXI century". Nevertheless the Russian Federation as well as the Council of Europe signing the international agreements followed the interpretation that was consensual at the time of introduction of the obligations in the Russian legal system: «it follows that through "evolutive" interpretation of Article 3 of Protocol no. 1 to the Convention the concrete contents of such criteria as "non-automatic application", proportionality and differentiation substantially changed in the ECtHR case-law over decades».

The Constitutional Court of the Russian Federation held impossible execution of the ECtHR judgment in *Anchugov and Gladkov v. Russia* in the part of general measures implying introduction of changes to Russian legislation (and following changes of court practice) that would allow to restrict the rights of not all convicted that serve their sentence in accordance with final court judgments. At the same time it was held possible and subject to implementation to execute this judgment in part of general measures securing fairness, proportionality and differentiation of application of restrictions of electoral rights. Moreover the federal legislator was given recommendations to optimise the system of criminal punishments, including by transferring of certain regimes of serving the court sentence to alternative punishments, connected with limiting personal freedom of convicts but not implying restrictions to their electoral rights.

This example demonstrates not discrepancies between the Convention and the Russian Constitution, but only different interpretation by courts of provisions regulating rights and freedoms.

After adoption of ECtHR judgment in *Khoroshenko v. Russia*, no. 41418/04, establishing violation of Article 8 of the Convention in connection with failure to afford long-term visits to convicts serving life imprisonment during the first ten years of their prison term, the Constitutional Court of the Russian Federation in its Judgment of 15 November 2016 no. 24-P returned to the issue of constitutionality of item "б" para 3 of Article 123 and para 3 of Article 127 of the Russian Correctional Code.

Elaborating on possible ways of harmonisation of the European Court's approach with the national legislation the Constitutional Court of the Russian Federation noted that the approach the ECtHR has developed in its case-law on the basis of modern trends of the inmates' socialisation and humanising conditions of criminal sentences serving does not contradict with Russian constitutional provisions.

The Constitutional Court of the Russian Federation had recognised Article 125 para 3 item "б" and Article 127 para 3 of the Russian Correctional Court to be in violation of the Constitutional of the Russian Federation, its Articles 15 (Section 4), 17 (Section 1), 23 (Section 1) and 55 (Section 3) taken in conjunction with Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms as interpreted by the European Court insofar as the impugned provisions exclude possibility to afford long-term visits to convicts serving life imprisonment during the first ten years of their prison term.

This example demonstrates that interpretation by the ECtHR of the Convention provisions is comparable to constitutional provisions regarding the right of convicts and theirs relatives to private life.

3. Is there an established procedure for choosing a specific catalogue of human rights in cases where the right is protected under more catalogues?

There is no detailed and precisely regulated procedure of determining concrete catalogue of human rights to refer to when certain right is entrenched in several catalogues, but the line of argument of the Constitutional Court includes references to a wide range of international human rights agreements to which Russia is a party. In fact references are most often made to human rights conventions concluded under the UN auspice and to the ECHR.

Determination of a concrete catalogue under which a person should be granted protection can be made within constitutional proceedings by the Constitutional Court, as well as by other courts on the basis of constitutional principles of the Constitution supremacy, priority of international treaties over the national legislation, guarantees of human and civil rights and freedoms under universally recognised principles and norms of international law (Sections 1 and 4 of Article 15, Section 1 of Article 17 of the Constitution of Russia). For example, in respect of the right of local self-government the Constitutional Court expressed position that if the Constitution and federal laws guarantee a higher level of rights, they shall have priority over international treaty establishing a minimum level of guarantees for the relevant right.[28]

[28] Constitutional Court Judgment of 30 November 2000 no. 15-P

II. SPECIAL PART – SPECIFIC ISSUES RELATED TO SELECTED FUNDAMENTAL RIGHTS

II.I Right to life

1. What is the original wording of the provision protecting this right in your national catalogue?

Article 20 (part 1) of the Constitutional of the Russian Federation:
«Everyone shall have the right to life».

2. Is it possible to restrict the right? If so, how and under what conditions?

Article 20 (part 2) of the Constitution of the Russian Federation:
«Capital punishment until its complete abolition may be established by federal law as an exclusive form of punishment for particularly grave crimes against life, and the accused shall be granted the right to have his case examined by a court with the participation of a jury».

3. Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.

In its Judgment of 2 February 1999 no. 3-P the Constitutional Court of the Russian Federation, acting within the subject matter of the case, on the basis of necessity to secure throughout the territory of Russia equal right of citizens to have their case considered by a court with participation of jury, found that from entering of the said Judgment into force until adoption of a relevant federal law securing within all the territory of Russian Federation the right to be tried by a court with participation of jury for every person accused in committing a crime that according to law can be punished by death penalty (capital punishment) as an exclusive form of punishment, such punishment cannot be imposed irrespective of whether a certain case is considered by a court with participation of jury, by a panel of three judges or by court composed of a judge and two lay judges ("peoples assessors") (para 5 or the operative part).

In this Judgment the Constitutional Court invoked procedural grounds to forbid imposition of capital punishment: namely, by the lack of court with participation of jury, even if in some of Russian territory. Nevertheless, over time the legal potential of this ground became exhausted since such courts were created on all the territory of the Russian Federation by 1 January 2010.

In this regard the Constitutional Court received a request from the Supreme Court of Russia, which asked for official clarification of provisions of Judgment of 2 February 1999 related to the moratorium imposed on capital punishment. The request was based on the assumption that after jury courts were introduced on all the territory of Russia the judges may ponder possibility of imposition of capital punishment. In other words, the question was raised whether the prohibition of capital punishment that was established by the Constitutional Court Judgment continued to exist after 1 January 2010.

The Constitutional Court responded to the Supreme Court request by clarifying the order of execution of its Judgment of 2 February 1999 no. 3-P in the context of trends as regards capital punishment connected to the international obligations of the Russian Federation as regards the moratorium imposed on it. In its Decision of 19 November 2009 no 1344-O-R the Constitutional Court held that in the Russian Federation due to lengthy moratorium on the imposition and execution of capital punishment stable guarantees of the right not to be subjected to capital punishment had evolved, therefore a legitimate constitutional legal regime developed promoting irreversible process towards complete abolition of capital punishment as an exclusive punishment foreseen only temporarily (according to the Constitutional – "until its complete abolition") and possible only for an interim period, i.e. until the achievement of the goal foreseen by Article 20 (Section 2) of the Constitution of the Russian Federation; therefore the execution of the said Judgment

in part related to introduction of jury court in all the territory of the Russian Federation does not open possibility to impose capital punishment, even if it is based on the guilty verdict rendered by a jury.

At the same time the Constitutional Court of the Russian Federation noted that the Russian Federation is bound by requirements of Article 18 of the Vienna Convention on the Law of Treaties not to take actions that would deprive Protocol no. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms (signed but not ratified by Russia) of its object and aims; this obligation is imposed on the State as a whole and can be realised in any form on the basis of separation of powers, coherent functioning and cooperation of public state authorities.

Refraining from imposition of capital punishment and its non-execution are equally compliant with Article 18 of the Vienna Convention on the Law of Treaties. Therefore, the obligations of the Russian Federation after signing of Protocol no. 6 were discharged at first by replacing capital punishment with other punishment unconnected with deprivation of life under Presidential pardons (item "в", Article 89 of the Constitution of the Russian Federation), and further – by prohibition to impose capital punishment established by the Judgment of the Constitutional Court of the Russian Federation of 2 February no. 3-P.

4. Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

The Constitutional Court case law in respect of protection of the right to life essentially does not differ from the international courts case law.

II.II Freedom of expression

1. What is the original wording of the provision protecting this right in your national catalogue?

Article 29 (parts 1 and 3) of the Constitution of the Russian Federation:
«Everyone shall be guaranteed freedom of thought and speech.
Nobody shall be forced to express his thoughts and convictions or to deny them».

2. Is it possible to restrict the right? If so, how and under what conditions?

Article 29 (part 2) of the Constitution of the Russian Federation:

«Propaganda or agitation, which arouses social, racial, national or religious hatred and hostility shall be prohibited. Propaganda of social, racial, national, religious or linguistic supremacy shall also be prohibi-ted».

This right can be limited by federal law only to the extent necessary for the protection of the basis of the constitutional order, morality, health, rights and lawful interests of other people, and for ensuring the defence of the country and the security of the State (part 3 of Article 55 of the Constitution), as well as in case of a state of emergency (Article 56 of the Constitution).

3. Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.

As regards the matter of prohibiting the state servicemen to make public statements, thought or evaluations including those in the media, as regards the work of public state authorities, their heads (including those regarding decisions of superior public state authorities or a state authority where such serviceman is employed) unless these expressions are part of their official duty the Constitutional Court of the Russian Federation in its Judgment of 30 June 2011 no. 11-P held the following:

- freedom of thought and expression means that nobody can be forced to express their thoughts or beliefs or to abandon them, as well as that everybody is entitled to freely search, obtain, transfer, produce and spread information by any lawful means;

- freedom of thought represents not only a State-guaranteed possibility to freely express one's view on different matters orally or on paper, but also a condition of effectiveness of public scrutiny over actions of public authorities;

- constitutional prohibition of forcing one to abandon his or her views and beliefs is addressed to State authorities, municipal authorities, political parties, other public associations and their officials, as well as all the members of society;

- the Constitution of the Russian Federation does not impose any ideological frames for freedom of speech, and truly guaranteed freedom of expression of varying views, positions and beliefs, freedom of criticism and opposition is a concrete criterion of a society democratisation.

In this case the Constitutional Court of the Russian Federation referred to the human rights catalogue contained in the Convention for the Protection of Human Rights and Fundamental Freedoms.

4. Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

Case law of the Constitutional Court of the Russian Federation has no essential differences from the case law of international courts. At the same time specific features of these practices may manifest themselves upon consideration of certain aspects of this right. In particular, the Constitutional Court, unlike the European Court and the UN Human Rights Committee deems it acceptable to limit this right by way of prohibiting promotion among minors and thrusting on them the non-traditional sexual relations (Judgment of 23 September no. 24-P). In this Judgment the Constitutional Court noted nevertheless that the Constitution of the Russian Federation gives no grounds to impose prohibition on public discussions on sexual relations including non-traditional ones, and on ensuring rights, freedoms and legitimate interests of sexual minorities – given that insulting social morals form of presentation of the information regarding sexual relations is not acceptable both for sexual views of the majority of society and for members of society that have non-traditional preferences; the relevant discussions should not be impeded on the grounds that non-traditional sexual preferences themselves may be insulting for many from point of view of accepted morals in Russian society or may otherwise interfere with social morality and related rights, freedoms and legitimate interests of others, since one of the important constitutional characteristics of the Russian Federation as a democratic state under the rule of law is possibility of free representation in public discourse and information field of varying views and positions.

II.III. Right to privacy/right to respect for private life/right to private life

1. What is the original wording of the provision protecting this right in your national catalogue?

Article 23 (parts 1 and 2) of the Constitution of the Russian Federation:

«Everyone shall have the right to the inviolability of his (her) private life, personal and family privacy, and protection of his (her) honour and good name.

Everyone shall have the right to privacy of corre-spondence, of telephone conversations and of postal, telegraph and other communications. This right may be limited only on the basis of a court order».

Article 24 (parts 1 and 2) of the Constitution of the Russian Federation:

«Collecting, keeping, using and disseminating information about the private life of a person shall not be permitted without his (her) consent.

State government bodies and local self-govern-ment bodies and their officials shall be obliged to provide everyone with access to documents and ma-terials directly affecting his (her) rights and free-doms, unless otherwise envisaged by law».

2. Is it possible to restrict the right? If so, how and under what conditions?

According to Section 3 of Article 55 of the Constitution the right to private life can be limited by federal law only to the extent necessary for the protection of the basis of the constitutional order, morality, health, rights and lawful interests of other people, and for ensuring the defence of the country and the security of the State. At that according to Section 2 of Article 23 of the Constitution this right may be restricted only on the basis of a court decision. The right to private life, to personal and family secret, protection of honour and reputation cannot be restricted in a state of emergency (Section 3 of Article 56 of the Constitution).

In the sphere of criminal justice the above provisions are further clarified e.g. by Article 13 of the Criminal Procedural Code of the Russian Federation, whereby restrictions of the right to privacy of correspondence, phone and other conversations, post, telegraph and other communications is allowed only on the basis of a court decision (para 1); arrest of postal or telegraph transmissions and their seizure from communications organisations, control and recording of phone or other conversations, obtaining information about connections between subscribers and (or) subscriber's devices may be performed only on the basis of a judicial decision (para 2). The same condition in the form of obligatory prior court decision is foreseen in Article 8 of the Federal Law "On Operative and Search Activities" for operative and search measures limiting human and civil constitutional rights to privacy of correspondence, phone conversations, postal, telegraph and other messages transmitted via electric and postal networks, as well as the right to inviolability of home.

3. Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.

The Constitutional Court of the Russian Federation has delivered about 20 Judgments related to ensuring constitutional right to private life; three of these Judgments considered constitutionality of criminal procedural legislation,[29] one – of criminal law,[30] one – of the Law of the Russian Federation "On the State Secret",[31] on – of the Federal Law "On Operative and Search Activities",[32] one – of the Russian Correctional Code.[33]

Defining the term "private life" and its contents the Constitutional Court developed the following legal positions:

- private life is understood as the sphere of individual autonomy of person in his or her relations with the State, its' bodies and officials, with society and other people, guaranteed by the Constitution of the Russian Federation and protected by the federal law from any arbitrary intrusion;[34]
- the scope of the right to private life extends to sphere of life related to concrete person and only to that person, it is not subject to control of state or society unless his or her actions are unlawful;[35]
- the right to inviolability of private life, to personal and family secret means afforded to a person

[29] Constitutional Court Judgments of 17 December 2015 no. 33-P. of 14 July 2011 no. 16-P, of 23 March 1994 no. 5-P.
[30] Constitutional Court Judgment of 31 March 2011 no. 3-P.
[31] Constitutional Court Judgment of 7 June 2012 no. 14-P.
[32] Constitutional Court Judgment of 9 June 2011 no. 12-P.
[33] Constitutional Court Judgment of 15 November 2016 no. 24-P.
[34] Constitutional Court Judgment of 14 May 2003 no. 8-P.
[35] Constitutional Court Judgments of 16 June 2015 no. 15-P, of 17 December 2015 no. 33-P.

and guaranteed by a state possibility to control information about him or herself, to impede disclosure of personal or intimate information;[36]

- the right to keep information about one's bank accounts or deposits secret (along with other information, scope and contents of which are established by law), as well as the relevant obligation of banks and other banking institutions to protect bank secrecy and the State's obligation to secure this right in legislation and law enforcement follow from constitutional guarantees of inviolability of private life and personal secret and from prohibition to disclose information about a person's private life without his or her consent.[37]

The Constitutional Court of the Russian Federation recognised censorship of correspondence between suspects and accused held in detention and their lawyers as interference with the right to inviolability of private life, personal and family secret. In the Judgment of 29 November 2010 no. 20-P that was dedicated to this issue the Court held that such censorship is possible where the administration of the detention centre has sufficient and legitimate reasons to believe that the correspondence contains prohibited enclosures or when there are well-grounded reasons to suspect that the lawyer abuses the attorney-client privilege, or when this correspondence puts the detention centre at risks or is otherwise illegal. In this Judgment the human rights catalogues of the ICCPR and of the ECHR were used, as well as legal positions of the European Court.

The Constitutional Court recognised the right to inviolability of private and family life of persons deprived of freedoms in the order prescribed by law. In its Decision of 7 February 2013 no. 133-O the Constitutional Court indicated that ensuring legitimate interests of persons arrested, detained or serving sentence implies that they cannot be fully excluded from sphere of contact of their relatives. This position was further elaborated in the Judgment of 15 November 2016 no. 24-P, where the Court found the violation of right to inviolability of private and family life of persons sentenced to life imprisonment who were not allowed long term visits for the first ten years of their prison term.

The Constitutional Court also invoked ensuring right to inviolability of private life when considering a situation of search in the lawyer's office conducted in the framework of a criminal case where this lawyer's client was a suspect or accused. In its Judgment of 17 December 2015 no. 33-P the Court underlined that the Constitution provisions along with corresponding international law norms excluding the possibility of arbitrary interference with individual autonomy of persons oblige the state to secure in legislation and in law enforcement practice such conditions for exercising the right to qualified legal assistance and effective activities of lawyers rendering such assistance, that would enable a citizen to freely communicate his lawyer such information that he or she would not disclose to other persons, enabling the lawyer at the same time to preserve confidentiality of information in his or her possession. In this Judgment the human rights catalogues of the International Covenant on Civil and Political Rights and of the Convention for the Protection of Human Rights and Fundamental Freedoms were used, as well as legal positions of the European Court.

The Constitutional Court developed several legal positions as regards realisation of the right to privacy of phone conversations (Section 2 of Article 23 of the Constitution). According to them the constitutional legal meaning of this right implies a set of measures for protection of information received via telephone network, irrespective of the time of receipt, coherence and contents of data saved on different stages of telephone exchange; therefore the privacy (secrecy) of phone conversation protected by the Constitution and the Russian laws in force concerns all data (information) that is transmitted, saved and established via telephone devices, including the data on ingoing and outgoing connection signals (calls) of certain phone network subscribers' devices; in order to obtain access to this data a court decision is required; lack of direct indication in federal legislation to the obligation of provider of the internet-service used for

[36] Constitutional Court Decision of 28 June 2012 no. 1253-O.
[37] Constitutional Court Judgment of 14 May 2003 no. 8-P.

sending and receiving of electronic messages to secure privacy of connections cannot be seen as proof of non-existing of this obligation.[38] The Constitutional Court referred to the human rights catalogues of the ICCPR (item "g" of section 3 of Article 14 and Article 17) and of the ECHR (Article 8).

The issue of respect of private life was also considered by the Constitutional Court with regard to interference of media with private life of celebrities. In its Decision of 12 February 2019 no. 274-O the Constitutional Court referred to international treaties of the Russian Federation including the ECHR according to which: everyone has the right to respect for his private and family life (paragraph 1 of Article 8); everyone has the right to freedom of expression and this right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers (paragraph 1 of Article 10), and held that the courts dealing with concrete cases have to take into account that information regarding private life, especially of intimate nature, cannot be regarded as publicly important only because this information concerns a celebrity (widely known person), including representatives of professions of art.

4. Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

The case law of the Constitutional Court of the Russian Federation as regards protection of private life does not, in its essence, differ from the international courts' case law.

II.IV Freedom of religion

1. What is the original wording of the provision protecting this right in your national catalogue?

Article 28 of the Constitution of the Russian Federation:

«Everyone shall be guaranteed freedom of con-science and religion, including the right to profess individually or collectively any religion or not to profess any religion, and freely to choose, possess and disseminate religious and other convictions and act in accordance with them».

2. Is it possible to restrict the right? If so, how and under what conditions?

The right to freedom of conscience can be limited by federal law only to the extent necessary for the protection of the basis of the constitutional order, morality, health, rights and lawful interests of other people, and for ensuring the defence of the country and the security of the State (Section 3 of Article 55 of the Constitution). State of emergency cannot serve as a ground to limit this right (Section 3 of Article 56 of the Constitution).

3. Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.

In its Judgment of 5 December 2012 no. 30-P the Constitutional Court noted the following:

- the Constitution of the Russian Federation proclaims Russian Federation a secular state where no religion may be established as the State religion or as obligatory and religious associations shall be separate from the State and shall be equal before the law (Article 14); since religious freedom is one of the most important forms of moral and spiritual self-determination of a person and is an internal matter for anyone

[38] Constitutional Court Judgment of 26 October 2017 no.25-P; Decisions of 2 October 2003 no. 345-O and of 21 October 2008 no. 528-O-O

the Constitution guarantees as one of the main personal (civil) rights the freedom of conscience and religion, including the right to profess individually or collectively any religion or not to profess any religion, and freely to choose, possess and disseminate religious and other convictions and act in accordance with them (Article 28);

- the scope of this right cannot be limited only to personal (private) life – being realised in the outside sphere, including in mass collective forms, it objectively gains rather significant public meaning, resulting in the obligation of the Russian Federation as the social state under the rule of law (Section 1 of Article 1, Section 1 of Article 7 of the Constitution of the Russian Federation) to ensure, in a neutral and unbiased manner, professing of different religions and beliefs in order to achieve social peace and conciliation, support public order and religious tolerance in society, prevent arbitrary and unjustified interference in religious organisations' activities, but also to prevent, given the secular nature of the Russian state, any falling to clericalism of state and public institutions;

- normative order of realisation of the right to freedom of conscience and freedom of religious beliefs requires to be correlated to the order of realisation of other constitutional rights, including those in the socio-political sphere, and obliges the legislator and law-enforcement bodies (including the courts) to secure legitimate balance of interests of religious individuals and religious organisations from the one side and secular political and State institutions from the other side, refraining from encroachment on the very essence of this right and from creating obstacles to it realisation;

- freedom of conscience and religious beliefs realised in the form of association of followers of a certain religion for collective pray, religious ceremonies and other activities is inseparable from other rights and freedoms enshrined in the Constitution of the Russian Federation, particularly in its Articles 27, 29, 30 and 31, first of all with the right to association and the right to freedom of assembly.

This right was considered in about 10 other Judgments and Decisions of the Constitutional Court.

The Constitutional Court referred to the human rights catalogues of the ECHR (Article 9) and the ICCPR (Article 18).

4. Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

The case law of the Constitutional Court of the Russian Federation as regards protection of the right to freedom of religious beliefs does not essentially differ from the case law of international courts.

II.V PROHIBITION OF DISCRIMINATION

1. What is the original wording of the provision protecting this right in your national catalogue?

The term "discrimination" is mention in the Constitution of the Russian Federation only once, in Section 3 of Article 37 providing that everyone shall have the right to work in conditions, which meet safety and hygiene requirements, and to receive remuneration for labour without any *discrimination* whatsoever and not below the mini-mum wage established by federal law, as well as the right of protection against unemployment.

At the same time prohibition of discrimination can be viewed through constitutional principle of equality. According to Article 19 of the Constitution all persons shall be equal before the law and the court (Section 1); the State guarantees the equality of human and civil rights and freedoms regardless of sex, race, nationality, language, origin, material and official status, place of residence, attitude to religion, con-victions, membership of public associations, or of other circumstances and all forms of limitations of hu-man rights on social, racial, national, language or religious grounds shall be prohibited (part 2); Men and women shall enjoy equal rights and freedoms and equal opportunities to exercise them (part 3).

2. Is it possible to restrict the right? If so, how and under what conditions?

The Constitution of the Russian Federation contains no provisions allowing to restrict the principle of equality, allowing to limit only certain human and civil rights and freedoms by federal law only to the extent necessary for the protection of the basis of the constitutional order, morality, health, rights and lawful interests of other people, and for ensuring the defence of the country and the security of the State (Section 3 of Article 55 of the Constitution). Nevertheless, these limitations cannot be discriminatory.

3. Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.

The Constitutional Court on numerous occasions gave interpretation to the principle of equality before the law and the court, noting its following aspects: legal relations of equal nature should be regulated equally; ensuring constitutional principle of equality guaranteeing protection from all forms of discrimination means *inter alia* prohibition to introduce such restriction for the rights of persons of the same category that have no objective and rational justifications (prohibition of different treatment of persons in equal or alike situations); any differentiation leading to differences in rights of people in a certain sphere of legal regulation must correspond to requirements of the Constitution of the Russian Federation according to which such differences are admissible if they are objectively justified, well-grounded, pursue constitutionally important goals and proportionate legal means are used to achieve these goals.[39]

As regards prohibition of discrimination on the grounds of gender or age in the field of criminal justice the common aspects of the equality principle were clarified in Constitutional Court decisions in the following way.

Having considered the issue of possibility of jury trial in respect of women the Constitutional Court of the Russian Federation underlined that the equality principle guarantees equal possibilities to men and women as regards realisation of their right to judicial defence, and accordingly of their right to have their criminal cases considered by court with participation of jury – otherwise if the issue of possibility to afford accused a possibility to have his or her case by a court with participation of jury was decided on the basis of gender and such possibility would be afforded only to males or only to females, then a violation of constitutional guarantees of the right to judicial defence would take place.[40] In certain cases lack of possibility for women to have their criminal case considered by court with participation of jury has no constitutional grounds and leads to discrimination of females in realisation of their right to judicial defence.[41] In adoption of this decision the Constitutional Court took into account provisions of the Declaration on the Elimination of Discrimination against Women adopted by the UN General Assembly on 7 November 1967 and of the Convention on the Elimination of all Forms of Discrimination against Women of 18 December 1979.

In considering the issue off access to court with participation of jury for elder persons the Constitutional Court in its Judgment of 16 March 2017 no. 7-P came to a conclusion that the legislation in force at the material time leads to impossibility (lacking any constitutional grounds) of considering a criminal case by a court with participation of jury where the man aged 65 was accused in committing a murder with aggravating circumstances – as the result the accused is discriminated in his right to judicial defence both on the basis of his age and gender. In this Judgment the Constitutional Court took into account

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[39] Constitutional Court Judgments of 24 May 2001 no. 8-P, of 3 June 2004 no. 11-P, of 15 June 2006 no. 6-P, of 16 June 2006 no. 7-P, of 5 April 2007 no. 5-P, of 25 March 2008 no. 6-P, of 26 February 2010 no. 4-P, of 10 November 2009 no. 17-P, of 14 July 2011 no. 16-P, of 9 February 2012 no. 2-P etc.

[40] Constitutional Court Judgment of 25 February no. 6-P.

[41] Constitutional Court Judgment of 11 May 2017 no. 13-P.

the case law of the ECtHR and its interpretation of the Convention and noted that while international law norms do not contain universal requirement for a special procedural form for elder persons (as opposed to procedures in respect of minors), the age of a person has been recognised as procedurally important, e.g. by the European Court in its judgment *Jablonska v. Poland* (no. 60225/00).

In its Judgment of 20 May 2014 no. 16-P the Constitutional Court came to a conclusion that exclusion of criminal cases against minors from jurisdiction of jury trial cannot be seen as unfavourable for minors and establishing differences discriminating them as compared to persons of age in ensuring judicial defence of their constitutional rights. In this Judgment due regard was taken of United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) adopted by the Resolution of the UN General Assembly of 29 November 1985 no. 40/33.

On numerous occasions the Constitutional Court considered the issue of impossibility to impose life imprisonment sentence on women, persons who committed a crime before turning 18 and men ageing 65 or more by the time of the court sentence delivery. This legislative restriction of possible sentence was recognised as non-discriminatory.[42]

The finding was justified *inter alia* by the European Court's case law and interpretation of the Convention provisions. Thus, in its Judgment of 16 March 2017 no. 7-P the Constitutional Court referred to the judgment of the ECtHR Grand Chamber of 24 January 2017 in the case *Khamtokhu and Aksenchik v. Russia* (nos. 60367/08 and 961/11) whereby it was noted that the Russian legislation that does not provide possibility to impose criminal sentence in the form of life imprisonment on men aged 65 or more does not violate the Convention for the Protection of Human Rights and Fundamental Freedoms as regards discrimination on the basis of age.

Prohibition of discrimination was also examined by the Constitutional Court in context of electoral rights. In particular the Court held that regional legislation imposing additional conditions for exercising passive electoral rights as regards participation in elections of the regional executive head, such as the minimum or maximum age of the candidate or certain time of residing in the region, were discriminatory and contradicted the Constitution of the Russian Federation.[43]

Similarly, unlimited in time and undifferentiated prohibition to be elected (passive electoral right) for Russian citizens who were sentenced to imprisonment prison terms for grave and (or) particularly grave crimes, was also held unconstitutional, including on the basis of its contradiction with non-discriminatory clauses of the Constitution.[44]

The Constitutional Court of the Russian Federation also examined the interpretation of constitutional prohibition to elect or be elected for citizens who were sentenced by court and serve their prison terms (part 3 of Article 32 of the Constitution); and recommended the legislator to optimise the system of criminal punishments, including by transferring certain regimes of imprisonment to separate types of punishment, connected with deprivation of liberty but not resulting in restrictions to electoral rights.[45]

In these cases the Constitutional Court referred to human rights catalogues foreseen by the ECHR (Article 3 of Protocol no. 1) and the ICCPR (Article 25).

The prohibition of discrimination was on numerous occasions considered by the Constitutional Court in the context of ensuring realisation of rights in social and labour sphere.

Guiding itself by this principle, further clarified by the 1958 ILO Convention no. 111 "concerning Discrimination in Respect of Employment and Occupation", the Constitutional Court has developed several legal positions regarding legal regulation of labour and service relations. For example, references to the said ILO Convention were made by the Court among other arguments concerning constitutional evaluation

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[42] Constitutional Court Decisions of 24 September 2013 no. 1428-O, of 20 February 2014 no. 376-O, of 29 September 2016 no. 1913-O etc.

[43] Constitutional Court Judgment of 27 April 1998 no. 12-P.

[44] Constitutional Court Judgment of 10 October 2013 no. 20-P.

[45] Constitutional Court Judgment of 19 April 2016 no. 12-P.

of possibility to terminate employment of state servicemen employed in law-protection sphere on the basis of their criminal prosecution[46] or when their period of service enabled their right to pension.[47]

This ILO Convention was one of the grounds for the legal positions of the Constitutional Court regarding unacceptability of age limitations for persons serving as head of department in state and municipal institutions of higher education,[48] as well as regarding impossibility to terminate contract with nursery teachers that had no secondary vocational education or higher education, if they were employed before new requirements were established by the Federal Law "On Education in the Russian Federation" and successfully pursue professional pedagogical work and were recognised by attestation as meeting the requirements for the post they hold.[49]

It would be appropriate to note examples when the Constitutional Court developed comprehensive argumentation using provisions of both basic and special international legal instruments while considering issues of constitutionality of education regulations related to certain aspects of social defence of pupils and their parents. In particular in its Judgment of 15 May 2006 no. 5-P the Constructional Court referred to Articles 7, 19, 38 and 43 of the Constitutional that guarantee that there is general access to free education and equality of citizen's rights in this sphere irrespective of socio-economic and other differences between them, but also the Court referred to Article 13 of the International Covenant on Economic, Social and Cultural Rights, Convention against Discrimination in Education (adopted by the UNESCO General Conference on 14 December 1960), and in its Judgment of 5 July 2017 no. 18-P the Court supplemented this argumentation by referring to Article 26 of the UDHR, Article 2 of Protocol no. 2 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Article 28 of the Convention on the Rights of the Child.

It should be noted that in its practice the Constitutional Court traditionally pays much attention to protection of labour rights of persons with children; when considering relevant cases it invokes arguments on the basis *inter alia* of rights reflected in international catalogues, including the 1981 ILO Convention no. 156 "Concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities". References to this Convention were made by the Court in its legal position developed in Judgment of 6 February 2009 no. 3-P as regards social protection of father (or other family member) in fact caring about the minor less than 1,5 years old in case of illness of the mother, who was afforded a nursing leave until the child reaches 1,5 years; in its Judgment of 15 December 2011 no. 28-P provisions of Article 261 of the Labour Code of the Russian Federation were recognised as non-conformant to the Constitution insofar as they prohibited termination of employment on the initiative of the employer in respect of women taking care of the child that is less than 3 years old and other persons taking care of such children without a mother, but at the same time excluded such guarantee for the father who is a sole breadwinner of the family with many children that takes care about infants including those under the age of 3, where the mother is not employed and takes care of the children only.

Guarantees against discrimination are especially important also for disabled persons, including disabled minors. In its Judgments of 1 July 2014 no. 20-P and of 27 June 2017 no. 17-P the Constitutional Court noted that the right of disabled to economic and social support and to adequate standard of living was proclaimed in the Declaration on the Rights of Disabled Persons (adopted by the UN General Assembly of 9 December 1975). Item 6 of the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (adopted by the UN General Assembly on 20 December 1993) underlines the right of disabled persons to equal opportunities with other citizens and to equal improvement of conditions of life as the result of economic and social development. Article 28 of the UN Convention on Rights of Persons with Disabilities (adopted by the UN General Assembly on 13 December 2006) that was ratified by the Russian

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[46] Constitutional Court Judgments of 21 March 2014 no. 7-P, of 11 November 2014 no. 29-P, of 8 December 2015 no. 31-P.
[47] Constitutional Court Judgment of 6 July 1995 no. 7-P.
[48] Constitutional Court Judgment of 27 December 1999 no. 19-P.
[49] Constitutional Court Judgment of 14 November 2018 no. 41-P.

Federation also recognises the right of disabled persons to adequate standard of living and social protection. In connection with the said international legal norms the provisions of the Constitution of the Russian Federation impose an obligation on the legislator when establishing certain measures of social protection for disabled persons to guarantee all the citizens of the relevant category affording of such measures irrespective of other nuances of their legal status or realisation of relevant rights. In the above Judgments the Constitutional Court instructed the federal legislator to guarantee all the persons from particular risks detachments that became disabled their right to compensation of damage to their health by radiation on the same conditions as other military servicemen whose health was damaged by radiation and who were recognised as disabled as the result of it; the Court also excluded possibility to refuse representative of a disabled child that requires means of transport (vehicle) for medical reasons to pay compensation in the amount of 50 percent of the insurance costs under obligatory insurance only on the ground that the representative of such child (and not himself) was the owner of vehicle used to provide the needs of a disabled child.

A unique case in the Constitutional Court's practice is the Judgment of 23 May 1995 no. 6-P whereby the Court in essence recognised that children under 16 years old that were in penitentiary institutions together with their parents, or in exile, banishment or in special settlements have the right to rehabilitation equal to that of their parents. The Constitutional Court *inter alia* referred to Article 26 of the ICCPR and underlined that it is unacceptable to discriminate victims of political repressions on the basis of age when providing them with social care (compensations in connection with rehabilitation).

4. Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

The case law of the Constitutional Court in the sphere of protection from discrimination has no essential differences from the case law of international courts.

II.VI RIGHT TO LIBERTY

1. What is the original wording of the provision protecting this right in your national catalogue?

Article 22 of the Constitution of the Russian Federation:

«Everyone shall have the right to freedom and security of person.

Arrest, detention and keeping in custody shall be permissible only under a court order. A person may not be detained for more than 48 hours without a court order».

2. Is it possible to restrict the right? If so, how and under what conditions?

The right to liberty in the sphere of criminal justice can be limited by federal law only to the extent necessary for the protection of the basis of the constitutional order, morality, health, rights and lawful interests of other people, and for ensuring the defence of the country and the security of the State (part 3 of Article 55 of the Constitution).

According to Article 56 of the Constitution in the conditions of a state of emergency, in order to ensure the safety of citizens and the protec-tion of the constitutional order and in accordance with federal constitutional law, certain restrictions may be imposed on human rights and freedoms with an indication of their limits and the period for which they have effect (part 1); a state of emergency on the entire territory of the Russian Federation and in certain areas thereof may be introduced subject to the circumstances and in accordance with the procedure stipulated by fede-ral constitutional law (part 2).

3. Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.

As of 1 September 2019 the Constitutional Court has delivered 34 Judgments concerning issues of ensuring the constitutional right to freedom and security of person, 14 of which were related to considering constitutionality of criminal procedural legislation, 1 – of criminal legislation,[50] 1 – of correctional legislation,[51] and one concerned provisions of the Republic of Mordovia Law of 20 January 1996 "On Provisional Extraordinary Measures for Fighting Crime".[52]

The Constitutional Court on numerous occasions interpreted the right to liberty and indicated that it represents a most important social benefit, without which one cannot imagine dignity and value of human life and democratic state or society under the rule of law, that its respect and judicial protection exclude possibility of arbitrary interference with the sphere of individual autonomy of person, therefore limitation of this right is possible only on the basis of principles of legal certainty and fairness on the condition of observance of constitutional criteria of necessity and proportionality, that protect from irreparable damage to the very essence of this right, equally guaranteed to all the Russian citizens, foreigners and stateless persons and forming the basis of legal status of parson on Russian Federation together with other constitutional rights and freedoms. Adequate ensuring of the right to freedom and security of person implies effective protection from arrest, detention or deprivation of liberty in other forms than prescribed by law, without foreseen grounds and for the time-frame longer than established; any compulsory measures leading to restriction of this right should be performed only on condition of observance of constitutional and convention requirements; without a court decisions citizens (foreigners, stateless persons) can be detained, arrested or otherwise deprived of freedom if such measure is required, but no longer than for 48 hours; the judicial decision is meant not only to guarantee protection from arbitrary detention longer than for 48 hours, but also from unlawful detention as such by way of unbiased evaluation of lawfulness and reasonableness of detention; detention for uncertain period cannot be seen as acceptable restriction of the right to freedom and security of person, as it essentially is an infringement of this right.

For interpretation of this right the Constitutional Court referred to catalogues of rights contained in the UDHR (Articles 3, 8 and 9), the ICCPR (Articles 2 and 9) and the ECHR (Article 5).

For example in its Judgment of 14 March 2002 no. 6-P the Constitutional Court indicated that guarantees of judicial protection are of utter importance for situations connected to restrictions of one of the basic human rights – the right to freedom and security of person, as recognised in particular by the ECHR and the ICCPR. According to these international legal instruments everyone arrested or detained on accusation of committing a crime shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release (paragraph 3 of Article 5 of the Convention, item 3 of Article 9 of the ICCPR).

In many Judgments the Constitutional Court referred to Article 22 of the Constitution along with Article 5 of the Convention as a common normative basis for regulation of apprehension, arrest and detention. For example in Judgments of 16 June 2009 no. 9-P and of 31 January 2011 no. 1-P, of 22 March 2018 no. 12-P and others it indicated that any restriction of the right to freedom and security of person due to the necessity to isolate a person from society applied as a measure of procedural restraint or on the basis of material law norms should be accompanied by judicial supervision and other legal guarantees of fairness and proportionality of such restriction based on its legislatively established limits; at that any legislative measures if they in fact lead to deprivation of liberty should meet the requirements of lawfulness in the context of Article 22 of the Constitution of the Russian Federation and Article 5 of the Convention that

[50] Constitutional Court Judgment of 25 April 2001 no. 6-P.
[51] Constitutional Court Judgment of 27 February 2003 no. 1-P.
[52] Constitutional Court Judgment of 2 July 1997 no. 11-P.

form a normative basis for regulating arrest, apprehension and detention which despite their procedural differences in fact amount to deprivation of liberty.

Conditions of lawfulness of restrictions to liberty and security of person following from Article 22 and 55 of the Constitution were compared by the Constitutional Court to the case law of the ECtHR and its interpretation of the Convention.

For example, in the Judgment of 16 July 2015 no. 23-P it was noted that the position expressed by the Constitutional Court was also supported by the European Court according to which legal protection of a person from arbitrary interference on the part of State in his right to liberty guaranteed by Article 5 of the Convention implies proportionality of restrictions of this right, which means ensuring balance between public interests that may require preliminary detention of a person and importance of the right to freedom and security of person taking into account the presumption of innocence; in ensuring such balance an important factor is the length of detention which has to not exceed reasonably required; at that, while particular gravity of the crime can provoke such public reaction and social consequences that justify lengthy preliminary detention at least for some time, extending detention only on the basis of the gravity of crime is unacceptable, as the circumstances justifying detention have to be considered (possibility to influence witnesses, danger of absconding etc.) as well as importance of the subject of proceedings, complexity of the case, behaviour of the relevant person, position of competent bodies etc.

Similarity (essential equality) of positions of these Courts is noted in a number of other decisions of the Constitutional Court. For example in its Judgment of 22 March 2005 no. 4-P it was directly noted that legal positions of the Constitutional Court correlate with findings made in the ECtHR decisions: practice of detention of persons without concrete legal grounds only on the basis of lacking of clear rules establishing position of the detained person leading to possibility of detention for an indefinite period of time is incompatible with the principles of legal certainty and protection from arbitrariness; detention for several month without a court decision ordering detention, including on the sole reason that the case has been referred to the court cannot be deemed “lawful” within the meaning of Article 5 § 1 of the Convention and in itself contradicts the principle of legal certainty that is one of the basic elements of the rule of law.

An important role for the Constitutional Court case law in protection of right to liberty and security of person is attributed to the Universal Declaration of Human Rights that proclaimed that all human beings are born free and equal in dignity and rights (Article 1) and that everyone’s right to liberty and security belongs to them from birth and is one of the basic human rights,[53] as well as the International Covenant on Civil and Political Rights.[54] The Constitutional Court on numerous occasions cited its legal position that in situations connected to limitation of the right to freedoms and security of person particular importance is attributed to guarantees of judicial protection, as recognised by international legal instruments, stating that everyone arrested or detained upon criminal charges shall be entitled to trial within a reasonable time or to release (paragraph 3 of Article 5 of the Convention, item 3 of Article 9 of the International Covenant on Civil and Political Rights); restriction of liberty and security of person for a lengthy period without judicial control is prohibited.[55]

Having turned to the issue of limitation of the right to freedom of the mentally ill persons in connection with publicly dangerous deeds they committed the Constitutional Court referred to the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care approved by the UN General Assembly (item 1 of Principle 16 of the General Assembly Resolution of 17 December 1991 no. 46/119).[56] Taking into account this principle the Constitutional Court developed a legal position that limitations of right to liberty and security of persons guaranteed by Article 22 (part 1) of the Constitution is possible when a person suffers from a mental disease causing immediate danger for him of

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[53] Constitutional Court Judgment of 22 March 2005 no. 4-P.
[54] Constitutional Court Judgments of 13 June 1996 no. 14-P, of 4 March 2003 no. 2-P, of 22 March 2005 no. 4-P etc.
[55] Constitutional Court Judgment of 14 March 2002 no. 6-P.
[56] Constitutional Court Judgments of 21 May 2013 no. 10-P, of 24 May 2018 no. 20-P.

herself and for others, proved *inter alia* by the publicly dangerous act committed by that person meeting all the objective requirements of *corpus delicti*.

4. Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

The case law of the Constitutional Court related to the protection of the right to liberty and security of person does not essentially differ from the case law on international courts.