



**International Conference in commemoration  
of the 25th anniversary of the activity of the  
Constitutional Court of the Russian Federation**

**Modern Constitutional Justice:  
Challenges and Prospects  
(17 May 2016, Saint-Petersburg, Russia)**

**Draft speech by Mr Gianni Buquicchio  
President of the Venice Commission  
(11/05/2016 sc)**

Mr. President of the Constitutional Court of the Russian Federation,  
[...]

I am pleased to be with you today at the St. Petersburg Legal Forum and notably at the International Conference in commemoration of the 25th anniversary of the activity of the Constitutional Court of the Russian Federation.

St. Petersburg is not only a marvel of Russian architecture and culture; it is also a symbol of openness of your country and its strong bonds within Europe, of which you are an essential part as a member of the Council of Europe.

During the 25 years of its work, the Constitutional Court of the Russian Federation has established itself as a key factor for democracy, the protection of human rights and the rule of law in this country and I want to congratulate you, President Zorkin, for what you and your Court have achieved.

By choosing the topic “modern constitutional justice: challenges and prospects”, you have given us a wide scope for discussion.

I would like to benefit from that offer by moving from current challenges to constitutional justice in Europe in general to prospects of constitutional justice in the Russian Federation.

In March of this year, the Venice Commission adopted a declaration supporting Constitutional Courts against undue interference.

We are increasingly witnessing situations in several countries in Europe, but not only, in which pressure is placed on constitutional courts by other branches of power.

This is done either by questioning their jurisdiction or by drafting new laws that limit their powers or aim to control their composition.

In other cases, constitutional judges are not appointed in time and the number of remaining judges risks falling below the quorum.

An opinion adopted by the Venice Commission recently concluded that amendments to the law governing the procedure of the Constitutional Court of a EU member state would paralyse the functioning of the Court and reduce its effectiveness to such an extent that it would endanger democracy and the rule of law.

In another European country, following a judgement releasing journalists from custody, the Head of State heavily criticised the Constitutional Court and even threatened abolishing it altogether.

Threats to the constitutional courts are a clear violation of the Council of Europe's fundamental principles.

It is important to remember that a public authority – in its official capacity – does not enjoy the same freedom of speech as that enjoyed by an individual not entrusted with such a public function.

This does not mean – however – that state bodies are prohibited from publicly disagreeing with a judgment of the constitutional court.

But, it does mean that when they do so, they must make it clear that the judgment will still be implemented, regardless of whether or not they agree with it.

Constitutional justice is a key component of the checks and balances of a constitutional democracy and we have to remember that when other state bodies publicly attack a constitutional court, this institution's independence and neutrality is put at risk.

The Venice Commission strongly condemns this type of practice. It runs counter to the model of a democratic state based on the rule of law and governed by the principle of the separation of powers.

The Member States of the Council of Europe are bound by the Council's fundamental principles: that of democracy, the protection of human rights and the rule of law.

The Venice Commission and the World Conference on Constitutional Justice remain vigilant and we are ready to support Constitutional Courts where and whenever they are unduly attacked by other State powers

Mr President,

Last March, the Venice Commission adopted its interim opinion on the amendments to the Law on the Constitutional Court of the Russian Federation, which gives the Court the competence to decide whether the enforcement of decisions of international judicial bodies would contradict the Russian Constitution.

The interim opinion came to the conclusion that if a constitutional court cannot remove a contradiction between the Constitution and a judgment of the European Court of Human Rights it may be bound to declare that contradiction even if this does not terminate the State's obligations under international law.

The interim opinion called for a dialogue on the enforcement of judgments rather than an end to all modalities of execution.

Only recently, on 19 April 2016, your Constitutional Court applied this competence for the first time.

I am pleased to see that indeed in this important case the Constitutional Court did not conclude that there is an end to execution of the judgment of the European Court of Human Rights.

Instead your Court, Mr President, made useful distinctions and opened new avenues of enabling an interpretation of Russian legislation in conformity with the European Convention on Human Rights.

Your Court ruled out the possibility of excluding some categories of prisoners from disenfranchisement under Article 32 of the Constitution and considered that the Russian legal order already provides for an individual, proportionate assessment of the need for the loss of voting rights.

Nonetheless, your Court indicated to the Federal legislator a possible legislative reform which may "optimise" the reconciliation between the judgment of the European Court of Human Rights and the Russian Constitution.

You thus engaged in a useful judicial dialogue, while referring- and this is very important - to the responsibilities of the other State powers, notably the legislator, in the execution of the judgments of the European Court of Human Rights.

On 27 and 29 April, a delegation of the Venice Commission travelled to St. Petersburg and Moscow for discussions with the Russian authorities, most notably the Constitutional Court.

I would like to thank you for the warm welcome extended to this delegation and the useful meetings held.

Through the eyes and ears of this delegation, we have seen that there is indeed a strong commitment, both in Moscow and here in St. Petersburg,

to remain part of the European Convention on Human Rights and to follow the case-law of the European Court of Human Rights.

Taking into account its interim opinion and all new elements, the Commission will adopt its final opinion at its plenary session in June.

Mr President,

Let me turn to a more general point relating to the effectiveness of constitutional justice.

According to Kelsen, the father of specialised constitutional courts, the main purpose of a constitutional court is to remove unconstitutional laws from the legal system and there can be no doubt about that.

However, even if an unconstitutional law usually leads to a systematic violation of constitutional rights of many people, we have seen in many countries that more often human rights violations stem from individual acts only, which do not relate to unconstitutional legislation.

Even if a law is constitutional, its unconstitutional application may lead to the violation of the constitution in individual cases.

In its study on individual access to constitutional justice, the Venice Commission examined the various models of individual complaints to the Constitutional Court.

The Commission made a distinction between normative constitutional complaints directed exclusively against normative acts and the full

constitutional complaint directed against an individual act, whether or not based on an unconstitutional normative law.

However, often violations of the Constitution are not a result of an unconstitutional normative act but of an unconstitutional application of a constitutional normative act.

While it is certainly very positive to provide for direct access to the Constitutional Court in the first place, the system of normative constitutional control cannot be a remedy in many cases of human rights violations.

The choice made in the Russian Federation for a normative constitutional control means that often individuals cannot appeal to the Constitutional Court and cannot benefit from its important case-law and doctrine in the field of human rights.

As a consequence, after exhaustion of other remedies before the general courts, the only remaining avenue for the individual is to turn to the European Court of Human Rights in Strasbourg, which is indeed overburdened with too many cases from the Russian Federation.

A solution to this problem would be the introduction of a full constitutional complaint to the Constitutional Court of the Russian Federation, including against the unconstitutional application of constitutional normative acts.

Critics sometimes fear that individuals would turn the Constitutional Court into a fourth instance and nearly all cases decided by the Supreme Court

would then be appealed to the Constitutional Court, which then would implode under its case-load.

However, the Constitutional Court does not look into the interpretation of ordinary law – that remains of course the domain of the Supreme Court and the ordinary courts.

The Constitutional Court only controls whether the constitutional rights of the individual were violated.

The scope of the review of the Constitutional Court is thus much narrower than that of the Supreme Court.

Like in Spain or Germany, which have a system of full individual complaint, the vast majority of the cases remain inadmissible.

A wave of cases might indeed hit the Constitutional Court in the beginning but soon the citizens – and their lawyers – will understand that there is a specialisation in the examination of individual cases and that only few cases are admissible at the Court, which deals only with constitutional matters.

The initial and the long term increase of the case-load of the Constitutional Court can be managed through a combination of appropriate filters and, most importantly, through organisational measures within the Court.

The careful introduction of such an appeal takes time but we see that other countries where such a system exists for a long time or has been



introduced recently, like in Turkey, have a significantly lower number of cases pending in Strasbourg.

The reduction of cases in Strasbourg would most likely lead to a better understanding between the two Courts and – as a consequence – to a strong improvement of the political role of the Russian Federation within the Council of Europe.

However, the most important advantage would be that Russian citizens have their constitutional rights recognised on the Russian Federation soil by a Russian body and, in most cases, would not even turn to international bodies.

I am aware that the introduction of such a full constitutional complaint is complicated and would require changes on all normative levels. It would be a long and complicated process but, believe me, it is worth it.

The Venice Commission stands by your side and we are ready to share with you the wisdom of our members in such an endeavour.

Thank you Mr President