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Improving Eexamination Methods of
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Effective Case Management
Effective Decision Drafting

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REPORT ON

"Dealing with Individual Complaints:
Experience of the Russian Constitutional Court"

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Dealing with Individual Complaints: Experience of the Russian Constitutional Court

Introduction

This paper will first introduce the audience in most general terms to the Russian Constitutional Court and its powers. It will briefly discuss the categories of cases that the Court may decide. It will then address procedural issues of general relevance to all petitions and then turn to particulars pertinent to review of individual complaints. It will finally introduce the audience to several decisions of the Constitutional Court when specific rights and freedoms of individuals were at stake.

Jurisdiction

The Constitutional Court of the Russian Federation was first established in 1991 in the wake of the collapse of the Soviet Union. The sources of its authority were the Constitution of 1978 when Russia was part of the USSR, with major amendments introduced immediately prior to, and in the aftermath of the break-up of the Union[1], and the Law "On the Constitutional Court of the Russian Soviet Federal Socialist Republic" of 1991[2], as amended. The Court decided its first case in February 1992. Amidst the power struggle between the President and the Parliament that reached its violent climax in the fall of 1993, the Court was in effect suspended[3] and did not hear cases until March 1995.

Currently the Constitutional Court derives its powers from the Constitution of 1993[4] and the Federal Constitutional Law "On the Constitutional Court of the Russian Federation" of 1994, as amended[5]. It is part of the three-tiered judicial system[6]. But unlike the Supreme Court and the Higher Court of Arbitration that sit at the apex of pyramids of, respectively, courts of general jurisdiction and courts of arbitration, the Constitutional Court does not have such a foundation.
Article 125 of the Constitution and Article 3 of the Law "On the Constitutional Court" describe categories of cases that may be decided by the Court.

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[1] Konstitutsiya (Osnovnoy Zakon) Rossiyskoy Federatsii-Rossii [The Constitution (Fundamental Law) of the Russian Federation – Russia. Moscow, 1993, 127 p.

[2] Vedomosti S'yezda Narodnykh Deputatov i Verkhovnogo Soveta RSFSR [The Bulletin of the Congress of People's Deputies and of the Supreme Soviet of the RSFSR], 25 July 1991, #30 Art.1017.

[3] The Decree #1400 that President Boris Yetsin promulgated on 21 September 1993 merely suggested that "the Constitutional Court of the Russian Federation does not hold sessions until the convocation of the Federal Assembly of the Russian Federation" (see: Sobraniye Aktov Prezidenta i Pravitelstva Rossiyskoy Federatsii [Collection of Acts of the President and the Government of the Russian Federation], 27 September 1993, #39 Art.3597). However, under the circumstances that prevailed in Moscow those days that could not have been read other than an unequivocal order.

[4] Konstitutsiya Rossiyskoy Federatsii [The Constitution of the Russian Federation]. Moscow, 1993, 64 p. An English-language version of the Constitution may be found on the web-site of the Constitutional Court of the Russian Federation at <http://ks.rfnet.ru/english/rus-eng.htm>

[5] Sobraniye Zakonodatel'stva Rossiyskoy Federatsii [Collection of Laws of the Russian Federation], (hereafter – SZ RF), 25 July 1994, #13 Art.1447. A consolidated text may be found in KonsultantPlus© electronic commercial data-base. An English-language version of the Constitution may be found on the web-site of the Constitutional Court of the Russian Federation at <http://ks.rfnet.ru/english/ksangl.htm>

[6] The powers and jurisdiction of courts are set forth in Chapter 7 "The Judiciary" of the Constitution and the Federal Constitutional Law "On the Judicial System of the Russian Federation" of 1996, as amended (see: SZ RF, 6 January 1997, #1 Art.1).

The first category of cases involves legislative acts passed by public authorities, whether federal or regional, and only public authorities may petition the Court. These cases need not arise from any on-going dispute. A party with due authority may request an abstract review of a statute. When confronted with such petitions the Court shall rule on the constitutionality of federal laws and normative acts issued by the President, or by either chamber of the Federal Assembly, that is Parliament, or by the Government.

The Constitutional Court may also rule on the constitutionality of constitutions, charters and laws of the component entities of the Russian Federation, as well as on treaties concluded by those entities with the Federal authorities and between those entities.

Finally, the Court may decide on conformity with the Constitution of international treaties that have not yet come into force.

The second category comprises cases about jurisdictional disputes between federal authorities, or between federal and regional authorities, or between regional authorities.

The third category consists of cases where the Constitutional Court is petitioned by private persons or by courts requesting a constitutional review of a law that has been applied or ought to be applied in a particular case. Those will be discussed at greater length elsewhere in this paper.
It is only natural to expect the supreme judicial body of constitutional review to interpret the Constitution; however, unlike in some other jurisdictions, the Russian Constitutional Court may deal with it as an abstract question.

It should also be mentioned that the Constitutional Court would be requested to deliver an advisory opinion on the observance of a prescribed procedure of impeachment of the President.

Complaints

As to individual complaints, Art.96 of the Law "On the Constitutional Court" stipulates that "the right to petition the Constitutional Court of the Russian Federation with an individual or collective complaint on the violation of the constitutional rights and freedoms shall be vested in the citizens, whose rights and freedoms are being violated by the law that has been applied or ought to be applied in a specific case, and in the associations of citizens, as well as in other bodies and persons, envisaged in the federal law".

One may wonder whether the term "citizen" could be interpreted restrictively implying only Russian citizens. After all the Constitution itself grants certain rights and freedoms to "everybody", that is, to citizens of the Russian Federation, foreign citizens, and stateless persons, while several rights and freedoms are vested in citizens only. Article 125 of the Constitution which describes powers of the Constitutional Court, too, refers to "citizens". However, under Article 62 (3) of the Constitution "foreign citizens and stateless persons enjoy in the Russian Federation equal rights and bear equal responsibilities with the citizens of the Russian Federation, unless provided otherwise by a federal law or an international treaty of the Russian Federation". Moreover, several other provisions of the Constitution which, as combined, provide for a right to a fair trial, unequivocally refer to "everybody". It is the latter, broad interpretation of the term "citizen" that has always been adhered to by the Constitutional Court.

As to "associations of citizens", that term has evolved through the practice of the Constitutional Court to embrace a variety of entities. Those may include non-profit organizations, partnerships,

joint-stock associations, corporations and even municipalities as bodies of local self-government. The Court now treats federal unitary state enterprises as "associations of citizens". The latter concept is founded on the principle of equality of various types of property, as envisaged in Art. 8 (3) of the Constitution. As a practical matter, it is not clear which citizens' rights and what rights could be at stake when the Court is petitioned by federal unitary state enterprises. Unlike a joint-stock association, the state enterprise, as the name implies, is owned by the state rather than by individual stockholders. So far the Court seems to have drawn a line on the scope of the term "associations of citizens" by keeping governmental units outside its bounds.

A final observation on Art. 96 of the Law "On the Constitutional Court" is related to "other bodies and persons" who, too, may petition the Court. So far the current legislation has expanded the list of petitioners by adding to it the Prosecutor General[7] and the Commissioner on Human Rights[8]. Those two officials are entitled to file complaints with the Court on behalf of citizens.

The process: a view from the inside

Let us now look at what triggers off the review process at the Constitutional Court. The Law specifies reasons and grounds for that, the former being a petition and the latter being an uncertainty about the constitutionality of an act. The rules that apply to petitions are uniform whether it is an inquiry on the interpretation of the Constitution filed by the President or a complaint brought by a citizen N.

A complaint must contain certain information about the petitioner and his or her representative, the detailed description of a law or an act that is being disputed, the specifics of a case in which the law has been applied, or ought to be applied. And of course the complaint must state convincingly particular grounds for its consideration by the Constitutional Court, as well as the petitioner's own legal position and arguments with precise reference to Constitutional provisions. And, of course, the petitioner should state clearly his or her query addressed to the Constitutional Court. A petitioner will be also requested to enclose with the application a set of document listed in the Law "On the Constitutional Court", as well as a proof of payment of the state fee.

The latter requirement deserves a comment. Under the Law "On the Constitutional Court", an individual citizen will be charged a nominal fee. However, the Law entitles a petitioner with low income to be granted either a reduction of the fee or a full exemption from payment. Should a law or its provision that is contested by an individual or an association be declared unconstitutional, then all court costs and expenses borne by a petitioner will be reimbursed in full.

A veteran staff member's experience proves that petitions' sophistication visibly increases as the citizenry is becoming more accustomed to the Constitutional Court. That may be explained both by individuals becoming enlightened about the Court's jurisprudence, and by legal services becoming more available and accessible to the general public. That notwithstanding, the Court's Reception is receiving dozens of visitors who request assistance in completing their complaints.

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[7] The Federal Law "On the Prosecutor's Office of the Russian Federation", Art. 35 (6). – SZ RF, 20 November 1995, # 47, Art. 4472, as amended. A consolidated text may be found in KonsultantPlus© electronic commercial data-base.

[8] The Federal Constitutional Law "On the Commissioner on Human Rights in the Russian Federation", Art. 29 (1.5). – SZ RF, 3 March, # 9, Art. 1011.

In the year 2003 that department of the Court's Secretariat advised one hundred and eleven individuals on how best to meet formal requirements to a complaint. Of course the staff members would never go into the merits of a question of law posed in a complaint. However, they may provide a visitor with a detailed explanation of what the Law "On the Constitutional Court" says with regard to those requirements.

It might be worth mentioning that last year the Reception has received 1267 visitors who showed up at the Court's door. As that department employs lawyers and paralegals with extensive experience, they are able to handle most interviews. Should a case require a particular knowledge, it could be referred to a staff member with an in-depth expertise in a specific area of law. It is not unusual for a judge of the Constitutional Court to personally receive a would-be petitioner.

Quite often visitors refer to the Constitutional Court matters that fall outside its jurisdiction, or which they lack standing to refer. About one quarter would request a review of judgments that had been handed down by courts of general jurisdiction. Or, some would demand a review of a legislative act or a Presidential decree, or request an interpretation of the Constitution. Nevertheless, on particular occasions the Secretariat would not merely advise a visitor on a more appropriate course of action, but also assist individuals in securing an appointment at the Supreme Court, or the Prosecutor General's Office, or the Pardon and Citizenship Directorate of the Presidential Administration, or other governmental institutions, as appropriate. Of course, a referral from the Constitutional Court would add both confidence to a petitioner, and credibility to his or her query.

Once a petition has arrived to the Court, it will be registered, no matter whether it meets all formal requirements or not. If it doesn't, the petitioner will be notified by the Secretariat accordingly. However, there are two caveats here. Firstly, a petitioner whose complaint does not meet formal requirements of the Law, or whose status does not make him or her an appropriate petitioner, may rectify deficiencies of the original application and re-submit. Secondly, the Law entitles a petitioner to demand that the Court itself, rather than the Secretariat, take a decision on the fate of the petition, its deficiencies notwithstanding.

Petitions that have been screened by the Secretariat will then be assigned to one or several judges of the Court for a preliminary review. According to the Law that review must be completed within two months of the registration of the petition. Following that period the Court will have another month to decide on admissibility of the petition. Not later than one month after the Constitutional Court has decided that a complaint was admissible, the plenary session of the Court will assign the case to its docket.

While data may vary from year to year, on average the Constitutional Court of the Russian Federation will receive about 15,000 petitions per calendar year. Over 97 per cent of those will not pass the test of screening by the Secretariat. The Court itself will dismiss four hundred or more of those remaining. Those of course are aggregate numbers that include complaints filed both by individuals and other petitioners.

Admissibility

To be admissible, a complaint about an alleged violation of the constitutional rights and freedoms should meet certain requirements derived from the text of the Law "On the Constitutional Court". Firstly the petitioner should question a law passed by the Federal Assembly or a legislature of a constituent entity of the Federation. Secondly, the law should

affect the rights and freedoms of the petitioner, rather than of a third person. Thirdly, the rights and freedoms must have their distinct origin in the Constitution. Fourthly, there should be a specific case, that has already been decided, or that has been initiated in the court or other law-applying body. Fifthly, it should be proven that a contested law has been applied or ought to be applied in a particular case where the petitioner is a party. The burden of meeting those requirements rests with the petitioner or his or her legal representative.

In addition to those statutory requirements the Constitutional Court has developed through its own practice certain criteria it will apply when assessing the admissibility of a complaint. It may consider a complaint admissible even if a decision of a court of general jurisdiction or of arbitration was in a petitioner's favor. Ambiguities of a contested law that result in its erroneous interpretation and application, ultimately leading to a violation of a right or freedom may, too, play in favor of the admissibility of a complaint. On the other hand, dealing with a proven lacuna in a law, which prevents a petitioner from exercising his or her constitutional right or freedom, is likely to be referred to the legislator. Finally, a complaint is unlikely to be admissible if a contested law falls within the purview of Art. 55 (3) of the Constitution which allows to subject rights and freedoms to limitations prescribed by a federal law and that are necessary for the protection of the constitutional order, morals, health, rights and legitimate interests of others, or to ensure defense of the nation and security of the state.

Decisions

At this point a brief note on types of decisions that are passed by the Court might be worthwhile. The Court when deciding a case on its merits will issue a judgment (*postanovleniye*). When it rules that a petition is inadmissible it will issue a ruling (*opredeleniye*). Some of the latter may be rather brief and merely state that, for example, a petitioner does not have standing, or that a question raised in the petition lies beyond the Court's jurisdiction. Others may carry more substance and express an argumentative position of the Constitutional Court on a matter of law. In the Court's own unofficial parlance those will be called "rulings with positive content". A positive decision on admissibility does not necessarily mean that hearings will result in a judgment, although most often they do. A decision not to hear a complaint on its merits may not preclude the Court from issuing a comprehensive ruling that may contain interpretative statements on the constitutional meaning of a law, although stopping short of the constitutional review of the latter.

If the Constitutional Court decides that a law or a provision thereof that has been applied or ought be applied in a specific case is unconstitutional, courts or other law-applying bodies may no longer apply that law or provision. Respectively, an outcome of a case heard by the Constitutional Court that may have arisen from a single private dispute would amount to class action. Other persons whose rights and freedoms have been affected by the application of a contested law may demand a review of their cases. To make those demands more convincing, the Constitutional Court has developed a technique that is not explicitly provided for in the Law "On the Constitutional Court". The Court may merge several petitions pertaining to one and the same question of law. It is not unusual for the Court to merge well over a dozen of petitions filed by private persons. However, there may be dozens more whose mere listing in a decision would be unpractical. What the Court does then is this. It admits all the complaints dealing with the same subject, then merges several to be decided as a single case, and extrapolates the effects of the judgment on all the rest.

Another technique often employed by the Constitutional Court is to formally dismiss complaints by a ruling, while clearly stating that a similar matter has been decided by an earlier judgment

which retains its force in full. This method allows the Court to extend its binding opinion to new petitions without initiating time-consuming formal procedures.

The Law on the Constitutional Court explicitly requires the Court to officially publish its judgments and advisory opinions, but not rulings. Therefore, it is up to the Court itself to decide whether to publish a particular ruling which leaves unpublished some of them. While most of those are of significance only to parties that are directly involved in the matter, there are still a few that may be of interest to a more general audience, but of which it remains largely unaware.

Sample cases

In the concluding portion of this paper the audience will be introduced to several decisions of the Constitutional Court that may be illustrative of some of the techniques used by the Court, as well as of effects of its action. Some of those resulted from inquiries that have been filed by courts of general jurisdiction rather than from private complaints. None-the-less, they have been selected because they originated from private disputes with individual rights and freedoms being at stake.

Conscientious objectors. The current Russian Constitution, unlike its predecessors, recognizes conscientious objectors. In Art.59(3) it states that a person is entitled to an alternative civilian service if by reason of his convictions or religious beliefs he is opposed to military service, which is compulsory in Russia. The Constitution allows other grounds for such substitution, however those grounds need to be specified in a federal law. Eventually the Federal Law "On Alternative Civilian Service" has been adopted and entered into force on 1 January 2004[9]. But prior to its adoption local draft boards interpreted that provision of the Constitution restrictively. They insisted that until the law was enacted a conscientious objector could not claim his right to an alternative service.

The Constitutional Court received several petitions regarding the exercise of the right to alternative civilian service. Those petitions were filed both by draftees and by courts of general jurisdiction that heard cases that were brought both by and against objectors.

A court of general jurisdiction in Kemerovo District in the East of Russia was hearing a case of a young man who had been charged with draft evasion. The defendant was a member of the Jehovah's Witnesses and refused to don the uniform while expressly willing to perform an alternative service. The court questioned the constitutionality a provision of the then effective Criminal Code of 1960[10] that in the opinion of the presiding judge violated the right of a citizen to such service. In a situation when a court has doubts about the constitutionality of an applicable law, it is entitled to suspend proceedings and to request the Constitutional Court to review that law.

[9] SZ RF, 29 July 2002, # 30, Art.3030.

[10] Original version published in: Vedomosti Verkhovnogo Soveta RSFSR [The Bulletin of the Supreme Soviet of the Russian Soviet Federated Socialist Republic], 1960, #40 Art.591. The consolidated text may be found in KonsultantPlus© electronic commercial data-base. The contested provision was Art.80 "Evasion from Regular Draft to Active Military Service" that criminalised draft evasion with possible sentences of one to five years in prison.

The Constitutional Court deferred the consideration of the petition on its merits. However, in what became a "ruling with positive content"[11] it argued that the disputed provision of the Criminal Code applied to draft evaders rather than to conscientious objectors. Thus the article of the Code that made draft evasion a criminal offense did meet the test of constitutionality. Having said that, the Constitutional Court stated that the absence of a law regulating the alternative civilian service could not preclude the exercise of a right by a person who was able to prove that he indeed had convictions or religious beliefs that made military service unacceptable. Those two grounds for the exercise of the right are prescribed by the Constitution and do not require any implementing law.

Without interfering with legislative powers of the Federal Assembly, the Constitutional Court used the technique that may be described as a "legislative hint". With its own law-making initiative being limited to matters that explicitly fall within its jurisdiction, the Court highlighted a lacuna that ought to be closed by an appropriate branch of power. At the same time it instructed other departments of the Government as to how to apply the provision of the Constitution that prescribed the right to alternative civilian service.

However, in that, as well as in another decision adopted later that same year[12] the Constitutional Court stated that the fact that a draftee did have convictions or religious beliefs needed to be proven in the court of general jurisdiction, while other grounds would need to be specified by a law.

Uniformed parents. Another decision deserves attention both due to its landmark features and because it was prompted by events that had occurred here in Azerbaijan. One would not find as many servicewomen among the Russian military as in some Western armies, although their numbers have certainly grown in recent years. There are few mothers in uniforms, although the decision that will be discussed affected both mothers and fathers serving in the military.

Ms.Leukhina had signed a contract with the Ministry of Defense and was serving as an NCO in a Russian unit deployed in Azerbaijan. She was a mother of two young children who lived with her. The officer commanding the unit refused to pay her monthly compensations to support minor dependents. He argued that since the unit was deployed on the territory of a state with which Russia did not have an agreement on mutual support of dependents, she was not entitled to compensations provided for by a respective Russian law.

This audience should be aware that, following the break-up of the USSR in December 1991 Russia adopted into its jurisdiction quite a few units of the former Soviet Armed Forces that were deployed in what became territories of new independent states. On the legal side, that required a tremendous amount of treaty-making work, both on bi-lateral and multi-lateral levels. A respective treaty that could have been applicable law under the circumstances in which Ms. Leukhina found herself, was the Agreement on the Guarantees to Citizens with Regard to Payment of Social Benefits, Compensations to Families with Children, and Alimony, that entered into force on 12 April 1995[13]. Both Russia and Azerbaijan signed the Agreement,

[11] Ruling #63-O, 22 May 1996. Unofficial publication in: Konstitutsionniy Sud Rossiyskoy Federatsii: Postanovleniya. Opredeleniya [Constitutional Court of the Russian Federation: Judgments. Rulings] 1992-1996. Moscow, 1997, p.501-503.

[12] Ruling #93-O, 26 September 1996. Unpublished, text on file with the author.

[13] Sodruzhestvo [Commonwealth]. The official Bulletin of the Council of the Heads of State and of the Council of the Heads of Government of the Commonwealth of Independent States. 1994, #2 (21), p.89-93.

however the latter, unlike the former, had never ratified it thus making it ineffective in relations between the two countries.

The military court that heard the case of that servicewoman asked the Constitutional Court to review the Federal Law "On Government Compensations to Citizens with Children". The presiding judge argued that the Law, by making the compensation conditional on an international agreement, discriminated against the military serving abroad.

The Constitutional Court stated that it was not the Law, but rather the practice of its application that had been defective. The obligation of the State to support parents was unconditional. The burden of that support could be shared with another state-party to an international agreement. In the absence of such agreement it was the duty of the Russian Government to pay compensations in full. The Court further stated that "the special legal status of the military stems from the need to perform the duty and the obligation of the citizen of the Russian Federation to defend the Motherland. Hence the military, location of their duty station notwithstanding, shall be considered residing in the Russian Federation"[14].

Legal Assistance in Cases Involving State Secrets. Mr. Alexander Nikitin, a retired naval officer, signed a contract with a Norwegian environmental group "Bellona" to perform a study of nuclear safety issues in the Russian Northern Fleet. The Russian Federal Security Service (counterintelligence) charged him with high treason alleging that Mr. Nikitin illegally acquired and disclosed secret information in his analysis. The lawyer he had chosen was barred from the case on grounds of him not having security clearance. The Federal Security Service maintained that the Federal Law "On State Secrets" of 1993 required clearance for a lawyer in a case which involved information classified as secret[15]. Mr. Nikitin, along with several other petitioners, contested that law as affecting his rights.

The Constitutional Court found that the interpretation of the Law practiced by the Federal Security Service violated the right to legal assistance that was guaranteed by the Constitution. The Court stated that the role of a lawyer as a party in judicial proceedings as well as the nature of services he provided to his client were sufficient grounds for a waiver of regular procedures of authorization of access to secret information. Ironically under the contested Law, that authorization was performed by the Federal Security Service. That same agency enjoys almost exclusive investigatory powers in criminal cases involving state secrets. A lawyer whose client is charged with high treason would be rather ill at ease if he were obliged to request security clearance from the Federal Security Service that brought charges against his client.

The Constitutional Court ruled[16] that the disputed provision of the Law "On State Secrets" in its literal meaning did meet the test of constitutionality, while the meaning attributed to it by the Federal Security Service did not. And, to avoid any further misinterpretation of that provision, the Court explicitly directed the lawmakers to introduce a clarifying amendment to the Law.

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[14] SZ RF, 14 August 2000, #33 Art.3430. Incidentally, this was not a judgment, but rather a "ruling with positive content".

[15] SZ RF, 13 October 1997, # 41, Art.8220-8235, as amended. A consolidated text may be found in KonsultantPlus© electronic commercial data-base.

[16] Judgement #8-P, 27 March 1996. - SZ RF, 8 April 1996, #15 Art.1768.

Eighteen months later the Law was amended to include a provision that waived the authorization procedure with respect to lawyers whose clients stand criminal charges involving state secrets, as well as to deputies of both chambers of the Federal Assembly and to judges[17]. Of course that would not relieve them of responsibility for disclosure of state secrets.

In more recent rulings the Constitutional Court extended the effects of that judgment to proceedings in courts of arbitration[18] and to civil cases heard in courts of general jurisdiction[19].

Conclusion

Rather than making a tremendously thoughtful, if not nonsensical conclusion, let me share with you one theory to which I always introduce my students and other audiences.

Russian society has had a long history of lack of confidence and trust in the judiciary that goes back well beyond the 1917 October Revolution which brought the Communist Party to power. A common perception was that courts sentenced rather than administered justice. In the Soviet system a person would try to uphold a right in a regional Communist Party committee rather in a court of law.

When that system collapsed it left a gap that, in the eyes of public, had been partially filled by the Constitutional Court. Probably some would rather not notice a short noun "Court" hidden behind a long adjective "Constitutional". The new institution began to receive thousands of petitions that should have been addressed to other courts or even could have been resolved outside the judiciary.

The Constitutional Court on its own part often seemed to be inclined to take an attitude of rather protecting the right of an individual than upholding a public interest. Even now in the second decade of its existence the Court has yet to find a way of consistently maintaining the balance between the two. But I believe those are growing pains that are rather benign as compared to other maladies of reforming societies.

[17] That amendment was introduced by Federal Law #131-FZ, 6 October 1997. – SZ RF, 13 October 1997, #41 Art.4673.

[18] Ruling # 293-O, 10 November 2002. – SZ RF, 30 December 2002, # 52 (part 2), Art. 5288.

[19] Ruling # 314-O, 10 November 2002. – SZ RF, 10 February 2—3, # 6, Art. 549.