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TIME LIMITS IN CONSTITUTIONAL COURT PROCEEDINGS IN THE RUSSIAN FEDERATION: SOME QUESTIONS OF LEGISLATION AND PRACTICE

REPORT

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Introductory words

If we compare the first Law on the Constitutional Court of the RSFSR of 1991 (which was written from the beginning to the end by the expert in criminal procedure law) with effective Federal constitutional law on the Constitutional Court of the Russian Federation (which was prepared in the depths of the Court itself), we will notice that the second one is definitely more liberal towards time limits. This liberalism appears primarily in the fact that the Law, in principle, does not attach significance to time limits and almost does not regulate them. An example of exactly the opposite legislative solution is the Law on the Constitutional Court of Azerbaijan of 2003, which contains more than 20 organizational and procedural terms. Such specification can not contribute to the effectiveness of constitutional justice: e.g. as stated in The European Commission for Democracy through Law draft Opinion on the Rules of Procedure of the Constitutional Court of Azerbaijan, the provision that the sessions of the Plenum take place between 11 a.m. and 1 p.m. and between 3 p.m. and 5 p.m. seems very precise and the question arises whether it is necessary to lay down the time so precisely in Rules of Procedure.[1] This is undoubtedly the business of the Court to decide such questions. On the other hand, placing at disposal of the Court (and also of the applicant) practically unlimited discretion is worthy of criticism too.

Following more or less formed scientific tradition,[2] I distinguish the next stages of the constitutional legal proceedings in Russia and name those of them, which have limited duration:

1. Lodging of a complaint and its preliminary examination in the Secretariat of the Court;
2. Preliminary investigation by judge single-handedly *(2 months from the moment of registration);*
3. Acceptance of complaint for futher consideration by the Court *(1 month);*
4. Appointment of the case for hearings *(1 month);*
5. Preparation for hearings;
6. Hearings before the judges;
7. Preparation, adoption and publication of a decision;
8. Execution of a decision.[3]

[1] Draft Opinion on the Rules of Procedure of the Constitutional Court of Azerbaijan. Strasbourg, 14 June 2004. Opinion № 275/2004.

[2] See, e.g.: Витрук Н.В. Конституционное правосудие. Судебное конституционное право и процесс: Учеб. пособие. - М.: Закон и право: ЮНИТИ, 1998; Конституционный судебный процесс: Учебник для вузов / Отв. ред. М.С. Саликов. М.: НОРМА, 2003; Мазуров А.В. Комментарий к Федеральному Конституционному Закону «О Конституционном Суде Российской Федерации» (Постатейный). М., Частное Право, 2009.

[3] In contrast to other kinds of judicial proceedings, where courts have a real opportunity to participate in execution of their decisions, in constitutional legal proceedings implementation of judgment can not be considered as a full-fledged stage, so this topic is beyond the scope of our attention.

It is remarkable that neither the Law nor the Rules of the Court impose any deadlines, or at least, guiding terms, for the first stage, which opens up the process, as well as for the last stage, which completes the process.

Preliminary examination by the Secretariat

Therefore, the trial begins with the date of registration of appeal in the Department of letters of the Secretariat. Then, after preliminary examination, a responsible unit of the Secretariat must undertaken one of the following decisions:

1. To notify the applicant about non-compliance of his documents with formal requirements of law.
2. To prepare an opinion (a reference) or a draft decision of the Court, and to send all materials to the Secretary General for futher allocation among judges.

According to the Law preliminary investigation by judge should be completed not later than two months from the date of registration. Consequently, this two-month period must include both time limits for the Secretariat and for judge. But in two mentioned situations, steps of the Secretariat are not restricted formally by any time limits, especially if a complaint is evidently inadmissible, and investigation by judge obviously will not take place. In this case, it is especially unclear, how long Secretariat can hold a complaint. Anyway, in practice, these time limits exist - *30 days*, but it is reflected only in the Court's instruction on case managment.[4] What is the origin of this term? Actually this term is established by the special Law on the order of consideration of appeals of citizens of 2006, which determines general rules of consideration of applications, proposals and complaints. However, this act does not cover constitutional litigation (as well as other judicial litigations), so an application of law by analogy or some kind of custom take place. To be honest, I note that at present the Secretariat almost never goes beyond this 30-day deadline. Nevertheless such cases occured recently.

In this regard the question arises: is it possible to appeal against actions of official of the Secretariat, which caused unreasonable and essential violation of terms? In my opinion, the answer is obvious - yes, it is possible, both through administrative and judicial procedures. Such a possibility is provided by the Law of the Russian Federation on appeal against actions and decisions, which violate rights and freedoms of the citizens of 1993, which is applicable to all actions of all public servants. Such attempts have already been taken, but failed. In contrast to the Supreme Court and the Higher Arbitration Court of the Russian Federation, the Constitutional Court even did not establish rules of handling complaints against officials of the Secretariat. As for judicial appeal, this practice is rather controversial: in some cases the courts

[4] Временная Инструкция по делопроизводству в Конституционном Суде Российской Федерации. Утверждена Председателем Конституционного Суда 9 февраля 2010 года. Архив Конституционного Суда.

have recognized a right of appeal, but it did not lead to any positive results.[5] It seems that our district courts, arguing that the ordinary administrative proceeding is not provided for such cases, are not ready yet «to raise their voice» on the major judicial institution in the country...

I suppose that a formalization of this stage of proceedings is possible. Deadline for preliminary examination in the Secretariat can be established. However, given that each year nearly 20,000 appeals and requests are filed in the Constitutional Court and the total number of servants in four main departments is about 50 persons, this time limit should be reasonable. In the Opinion of the Venice Commission on the draft Code of constitutional procedure of Bolivia it is stated that a period of time equal to 24 hours can not be estimated as sufficient to determine whether the whole set of documents meet all requirements of the law.[6] Most probably, 5-day period, which is proposed by one of the bills, is not enough as well.[7]

Re-submission of a complaint

After receipt of the letter from the Secretariat, the applicant may either correct and complete his complaint and submit it again or to require the Court's decision on this matter. Time limits for such actions are not installed too. This means that in practice the applicant's case stays on the control during an indefinite period of time (probably about *3 months*), and then removed. In this case, the complaint is considered as not submitted. As a general rule, the deadline for correction of complaints is established precisely. According to the Law on the Constitutional Court of the RSFSR, this period was 1 month. Venice Commission also notes that this term is usually limited.[8] On the other hand, the Commission, stressing that this period should be sufficient, while considering the Law on the establishment and rules of procedure of the Constitutional Court of Turkey has pointed out that the period of 10 days is too short.[9] It seems to me that this preclusive term has a practical value: for example, the Court can join several cases into one case, if the subject of the complaints is identical. This reflects the principle of procedural economy. That is why it is necessary to know precisely what particular cases the Court deals with at this or that moment.

Consideration of the merits

The question of whether the whole trial in constitutional court needs to be restricted by procedural time limits is very debatable. The requirements of the previous Law on the Constitutional Court in this regard were very strict: from receiving an application to issuing the

[5] Определение Судебной коллегии по гражданским делам Самарского областного суда по делу № 2-1725/06
[6] Opinion on the draft Code of constitutional procedure of Bolivia. Strasbourg, 18 October 2011. Opinion № 645/2011
[7] http://www.yabloko.ru/Publ/Docs/KS.rtf
[8] Compilation of Venice Commission opinions and reports on constitutional justice. Strasbourg, 30 May 2011
[9] Opinion on the Law on the establishment and rules of procedure of the Constitutional Court of Turkey. Strasbourg, 12 September 2011. Opinion No. 612/2011

final decision no more than 6 months could pass. An option to extend this period was not provided. The «new» Law does not establish such a requirement, despite proposals of scientists and also judges.[10] Moreover, one of the bills provided for reduction of this period up to 4 months.[11]

It seems that if such a provision was included in the Law, it would be permanently infringed. The nature of the constitutional justice is such that a comprehensive investigation may take longer period of time (let me recall the case of KPSS, which took more than six months). The recent example is a case of corporation «Газэнергосеть»: its complaint was submitted in the end of July 2007, and the judgment was issued only in the end of June 2009 - hence the total length of the process was almost two years.

In 2010 the continuity principle was excluded from the Law on the Constitutional Court, and the Court obtained the opportunity to consider several cases at the same time, as a conveyor. Moreover so-called written proceedings was legalised by the legislator. At first glance these measures were directed to acceleration and improvement of effectiveness of the Constitutional Court. On the other hand, the legislator (for very arguable reasons), has terminated the chambers, so that the only one bench remains instead of three. This seriously hampers the work of the Court, and we hope that in the foreseeable future, this amendment will be canceled (probably through the efforts of the most farsighted and principled judges).

In any case the period of time from the adoption of the appeal for consideration to the hearings is determined by the order of bringing the matter before the court and the nature of the case. Consequently, it is unwise to establish any strict limitations. But given the experience of several countries, the deadlines of preparation of final judgments could be determined. On the average, during *1 month* judge-rapporteur prepares 3-5 draft decisions. But sometimes the decision is announced only after 2 - 2.5 months. However, these terms conform to the European practice: according to the German Federal Constitutional Court Act, the decision, as a general rule, shall be issued not later than three months after the end of oral pleadings, and the Court has the right to prolong this period.[12]

As for the position of the Venice Commission on the total length of proceedings, at least four statements may be concluded:[13]

1. National legislator may either provide for a deadline of decision-making, or leave this question open - both variants are allowed;

[10] Лучин В.О., Доронина О.Н. Жалобы граждан в Конституционный Суд Российской Федерации. М.: ЮНИТИ, 1998.
[11] http://www.yabloko.ru/Publ/Docs/KS.rtf
[12] See: Law on the Federal Constitutional Court (Gesetz über das Bundesverfassungsgericht)
[13] Compilation of Venice Commission opinions and reports on constitutional justice. Strasbourg, 30 May 2011

2. Time limits, if they are established, should not be too short to provide for an opportunity to examine the case fully and should not be too long to provide for an effectiveness of protection of human rights;
3. The constitutional or equivalent court should be able to speed up lengthy procedures;
4. The constitutional or equivalent court should be able to provide compensation in cases where proceedings are of an excessive length.

A complaint to the ECHR and Article 6 of the European Convention

Following the European Court of Human Rights ruling on the case «Burdov v. Russia», the Law on compensation for violation of the right to trial within a reasonable time or the right to judgment enforcement within a reasonable time was adopted. However, as it follows from the text of this Law, it does not apply to constitutional litigation, but only to litigation in courts of general and arbitration jurisdiction. In this regard, a very interesting question arises: whether it is possible to submit a complaint to the ECtHR on excessive length of proceedings in the Constitutional Court of Russia.

Already in the middle-1980s, the ECtHR has repeatedly recognized that national constitutional legal proceedings can be examined on the subject of compliance with Article 6 of the Convention, including the cases «Deumeland v. Germany» (1986)[14] and «Poiss v. Austria» (1987)[15]. At the moment, the proceedings in the Constitutional Court of Russia has been contested in the ECtHR for several times. As of 2007, in 2 cases there was an alleged violation of the requirements of a fair trial, in 1 case - the requirement of publicity, and in 2 cases - the requirement of reasonable time of proceedings.[16] However, it should be noted that in all these cases, it was a violation of a reasonable time not directly by proceedings in constitutional courts, but in the context of the overall length of the proceedings, which included also litigations in other courts.

The conclusions, made by the Court in case «Shneyderman v. Russia» (2007), are especially interesting. The Court found a delay of approximately fifteen months caused by the stay in the proceedings awaiting the opinion of the Constitutional Court. However, the ECtHR is not called upon to determine the reason for the delay in the preparation of the Constitutional Court's decision - it said - because Article 6 § 1 of the Convention imposes on Contracting States the duty to organize their judicial system in such a way that their courts can meet the

[14] Judgment on case of Deumeland v. Germany. (Application no. 9384/81) of 29.05.1986
[15] Judgment on case of Poiss v. Austria. (Application no. 9816/82) of 23.04.1987
[16] См. Российское конституционное судопроизводство как предмет европейской жалобы (2003-2007 годы) / Зарубежная практика конституционного контроля. Выпуск 120, 2007 год. Библиотека Конституционного Суда РФ.

obligation to decide cases within a reasonable time. The Court observes that the principal responsibility for that delay rests ultimately with the State.[17]

Other questions

In addition to these basic problems there are some other, minor. For example, the law establishes the rules of record-keeping, but does not say a word about the period of time when protocol must be made and about how soon the remarks on the protocol can be lodged. As a rule, this term is fixed by law and makes 10 (Azerbaijan, Belarus) or 5 days (Tajikistan, Moldova).

Both the Law and the Rules require the responsible unit of the Secretariat to inform citizens about the upcoming plenary session, but do not indicate that it must be done in due time. As a result, the message may simply become unuseful.

Finally, it is important to note that a constitutional complaint can be filed by citizen in any time regardless of the moment of application of the law, which means, that «limitation period» does not exist. This is the fundamental difference between the Law in force and the former Law of the 1991, which established a 3-year preclusive term, and also the German Federal Constitutional Court Act (general time limits are 1 month and 1 year). This demonstrates that socially-useful purposes of the constitutional justice must be achieved regardless of time conditions. And if the legislator refused to establish time limits for filing a complaint, it is logical that all the other terms are irrelevant too. This emphasizes that the aim of the constitutional justice differs from protecting a private interest, and an individual complaint can be regarded as a kind of «informational reason» to the proceedings.[18] As a result, constitutional courts should be given a wide discretion. However, this freedom might be restricted by the Court itself in its Rules.

Conclusions

Summarizing all the above, we can draw several conclusions:

1. Key stages of the constitutional legal proceedings in Russia are not legislatively restricted by any time limits;
2. The Constitutional Court also failed to exercise such regulation, leaving for itself a very wide margin of appreciation;
3. However, during the many years of practice the Court has elaborated certain customs in this field;

[17] Judgment on case of Shneyderman v. Russia. (Application no. 36045/02) of 11.01.2007

[18] However, the author does not fully share this opinion of honored scientists on the purposes of constitutional justice.

4. The practice of the Russian Court is broadly consistent with the practice of other European countries and also the standards, cultivated by the Venice Commission;
5. However, to protect the rights of applicants in events of significant and unreasonable delays in proceedings, it's necessary to provide concrete mechanisms of such a protection, including rules about administrative appeals and monetary compensations.
6. It is hoped that such mechanisms will gradually be created by national constitutional courts and courts with equivalent jurisdiction in cooperation and with the support of the Venice Commission, which permanently contribute to the development of constitutional justice in the whole world.