

ON INTERACTION OF THE CONSTITUTIONAL COURT AND THE SUPREME COURT OF THE RUSSIAN FEDERATION TO ENSURE CASE LAW INTEGRITY*

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The abolition of the Russian Constitutional Court chambers (hereinafter the Russian CC), and the legalization of records as well as other novelisations¹ in the law on the Constitutional Court of the Russian Federation aimed at improving the efficiency of the latter.² According to the authors, the integration of the Supreme Arbitration Court and the Supreme Court in the single Supreme Court of the Russian Federation (hereinafter the Russian SC)³ will improve the interaction between the Russian CC and the unified Russian SC, including in the field of achieving the case law integrity. The uniform case law is considered to be either an essential component

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¹ М.С. Саликов, *Новеллы конституционного судебного процесса*, Российский юридический журнал № 4, 2011 [M.S. Salikov, Novelisations of constitutional judicial process, Russian Juridical Journal No. 4, 2011], pp. 7–13.

² See: Г.А. Гаджиев, *Закон "О Конституционном Суде Российской Федерации"*: новеллы конституционного судопроизводства 2010 г., Журнал российского права № 10, 2011 [G.A. Gadzhiev, The Law "On Constitutional Court of the Russian Federation": Novelisations of constitutional judicial process 2010, Russian Juridical Journal No. 10, 2011], pp. 17–26; В.А. Кряжков, *Законодательная модернизация статуса Конституционного Суда Российской Федерации*, Конституционное и муниципальное право № 10, 2011 [V.A. Kryazhkov, The legislative modernization of status of the Russian Federation Constitutional Court, Constitutional and Municipal Law No. 10, 2011], pp. 13–17.

³ The President of the Russian Federation instructed the unified Supreme Court of the Russian Federation to ensure the uniform interpretation of the law, SPS (Law Reference System) GARANT.ru: <http://www.garant.ru/news/569652/#ixzz3XSfY4rkd> (application date: 24.11.2016).

and the result of judicial activity⁴ or the result of identical qualification of similar cases,⁵ and a form of judicial control⁶. The uniform case law in turn should be aimed at promoting the rule of law. The uniform case law is ensured by the judicial supervision⁷ or a form of lawmaking activity of higher courts⁸.

However, the review of mutual relations of the Constitutional Court and the Supreme Court of the Russian Federation⁹ leads to the conclusion that there are certain discrepancies present. Namely, in case of discrepancies between the legal positions of the Constitutional Court and the Plenum of the Supreme Court of the Russian Federation, by virtue of the direct instance, most judges of arbitration and general courts apply the practice of the Plenum of the Supreme Court of the Russian Federation. This preconditions court practice as well as the interpretation of legal provisions and their application in particular cases considered by them. At the same time, other judges use the legal position of the Constitutional Court of the Russian Federation as they consider its decisions and interpretations to be critical

⁴ С.Н. Братусь, А.Б. Венгеров, *Понятие, содержание и формы судебной практики*, [в:] С.Н. Братусь (ред.), *Судебная практика в советской правовой системе*, Москва 1975 [S.N. Bratus, A.B. Vengerov, *Case law concept, content, and forms*, [in:] S.N. Bratus (ed.), *Case law in Soviet legal system*, Moscow 1975], p. 9.

⁵ Г.Л. Осокина, *Гражданский процесс. Особенная часть*, Москва 2007 [G.L. Osokina, *Civil procedure. Special part*, Moscow 2007], p. 724.

⁶ Н.Г. Муратова, *Единство судебной практики: исторические предпосылки и современные тенденции*, [в:] Н.А. Колоколов (ред.), *Уголовное судопроизводство: теория и практика*, Москва 2011 [N.G. Muratova, *Case law unity: Historical background and modern trends*, [in:] N.A. Kolokolov (ed.), *Criminal proceedings: Theory and practice*, Moscow 2011], pp. 731–744.

⁷ В.М. Жуйков, *Роль разъяснений Пленума Верховного Суда Российской Федерации в обеспечении единства судебной практики и защиты прав человека*, [в:] В.М. Жуйков (ред.), *Комментарий к постановлению Пленума Верховного Суда Российской Федерации по гражданским делам*, Москва 2008 [V.M. Zhuykov, *The role of clarification of the Plenum of the Supreme Court of the Russian Federation in ensuring the unity of the case law and human rights protection*, [in:] V.M. Zhuykov (ed.), *Commentaries to the resolutions of the Plenum of the Supreme Court in civil cases*, Moscow 2008], p. 7.

⁸ Е.К. Замотаева, *Судебное нормотворчество как фактор динамики и стабильности законодательства*, [в:] *Закон: стабильность и динамика*, мат-лы заседания Международной школы-практикума молодых ученых-юристов, Москва 2007 [E.K. Zamotayeva, *Judicial lawmaking as a factor of legislative dynamics and dtability*, [in:] *Law: Stability and dynamics*, materials of the meeting of the International School-Workshop of Young Legal Scholars, Moscow 2007], pp. 151–157.

⁹ For more information, see: Постановление Пленума Верховного Суда РФ № 5 от 11 февраля 2007 г. “О изменении и дополнении некоторых постановлений Пленума Верховного Суда Российской Федерации по вопросам судебной деятельности”, БВС РФ № 3, 2007 [Resolution of the Plenum of the Supreme Court of the Russian Federation No. 5 dated 11 February 2007 “On amendments to certain resolutions of the Plenum of the Supreme Court of the Russian Federation concerning judicial activity”, Bulletin of the Supreme Court of the Russian Federation No. 3, 2007], pp. 9–14; Постановление Пленума Верховного Суда РФ № 9 от 16 апреля 2013 г. “О внесении изменений и дополнений в Постановление Пленума Верховного Суда Российской Федерации № 8 от 31 октября 1995 г. ‘О некоторых вопросах применения судами Конституции Российской Федерации при осуществлении правосудия’”, БВС РФ № 5, 2013 [Resolution of the Plenum of the Supreme Court of the Russian Federation No. 9 dated 16 April 2013 “On Amendments to the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 8 dated 31 October 1995 ‘On certain issues of application of the Constitution of the Russian Federation by the courts in the administration of justice’”, Bulletin of the Supreme Court of the Russian Federation No. 5, 2013], pp. 2–7.

for case law. They point out that the legal nature of the decisions of the Russian CC is hierarchically higher than the legal nature of the decisions of the Russian SC (similar to the hierarchy of normative legal acts, in the event of a conflict between subordinate acts and higher-rank ones, the latter apply). This phenomenon by its nature creates a discordance in judicial practice, despite the fact that the uniform application of the law by the courts is ensured by the Supreme Court of the Russian Federation (subpara. 1, para. 7, Art. 2 of the Federal Constitutional Law “On the Supreme Court of the Russian Federation”¹⁰).

Let us consider one such example. On 27 July 2011, the Presidium of the Supreme Court of the Russian Federation ordered the resumption of proceedings in view of the new circumstances based on recognizing the norms applied in *L.I. Kostareva*¹¹ Case improper by the Constitutional Court of the Russian Federation. At the same time, the Presidium of the Supreme Court of the Russian Federation in the supervision proceedings reviewed both the above decision of the Constitutional Court in *L.I. Kostareva* Case and other decisions of the Russian CC concerning the issue under review.¹² The review resulted in the following conclusion. The applicant’s rights were violated “not by the decision of the first instance court on the property seizure” and “not by the cassation ruling that confirmed the legality and validity of the above decision, but by the continuous nature of seizure and the refusal of the investigating authorities to cancel the interim relief”. Given that the applicant did not appeal against the actions and decisions of such authorities, the Presidium of the Supreme Court of the Russian Federation resumed the proceedings and at the same time *upheld such judgments*.¹³

¹⁰ See: Федеральный конституционный закон: “О Верховном Суде Российской Федерации” от 5 февраля 2014 г. № 3-ФКЗ, Российская газета № 27, 7 февраля 2014 [Federal Constitutional Law “On the Supreme Court of the Russian Federation” No. 3-FKZ dated 5 February 2014, Rossiyskaya Gazeta No. 27, 7 February 2014].

¹¹ Постановление Конституционного Суда Российской Федерации от 31 января 2011 г. № 1-П город Санкт-Петербург “По делу о проверке конституционности положений частей первой, третьей и девятой статьи 115, пункта 2 части первой статьи 208 Уголовно-процессуального кодекса Российской Федерации и абзаца девятого пункта 1 статьи 126 Федерального закона ‘О несостоятельности (банкротстве)’ в связи с жалобами закрытого акционерного общества ‘Недвижимость-М’, общества с ограниченной ответственностью ‘Соломатинское хлебоприемное предприятие’ и гражданки Л.И. Костаревой” (“Л.И. Костаревой”), Российская газета № 5405, 11 февраля 2011 [Resolution of the Constitutional Court of the Russian Federation No. 1-P dated 31 January 2011, Saint Petersburg, “On the case regarding the review of the constitutionality of provisions of the first, third and ninth parts of Article 115, clause 2 of the first part of Article 208 of the Criminal Procedure Code of the Russian Federation, and the ninth paragraph of clause 1 of Article 126 of the Federal Law ‘On insolvency (bankruptcy)’ in response to complaints of ‘Nedvizhimost-M’ closed joint-stock company, ‘Solomatinsk Grain Receiving Station’ limited liability company, and Ms L.I. Kostareva (*L.I. Kostareva* Case), Rossiyskaya Gazeta No. 5405, 11 February 2011].

¹² Resolutions: No. 9-P dated 16 July 2008; No. 9-P dated 28 May 1999; No. 3-P dated 21 March 2007; No. 1-P dated 17 January 2008; No. 6-P dated 25 March 2008; No. 4-P dated 26 February 2010; and rulings: No. 614-O-O dated 17 July 2007 and No. 246-O-O dated 20 March 2008.

¹³ К.Б. Калиновский, *Конституционный Суд следователю не указ?!*, Уголовный процесс № 10, 2011 [К.В. Kalinowskiy, *Investigators do not take orders from the Constitutional Court?!*, Criminal Procedure No. 10, 2011], p. 11.

Ms L.I. Kostareva again filed a suit to the Constitutional Court on 7 February 2013. In its ruling, the Constitutional Court noted¹⁴ that the position set out in the disputed judicial acts did not correspond to the constitutional meaning of the Russian CC Resolution No. 1-P dated 31 January 2011.

On 25 September 2013, the Presidium of the Supreme Court of the Russian Federation resumed the case of Ms L.I. Kostareva, cancelled all judgments on the issue, and sent the case for retrial.¹⁵ Further, the lower courts reviewed their decisions based on the position stated in the Resolution of the Presidium of the Supreme Court.

Despite occasional incidents, including in the above example, in order to minimize discrepancies in the court practice, the Secretariat of the Constitutional Court of the Russian Federation cooperates with the Russian SC Administrative Office Department.¹⁶ Such interaction leads to the conclusion on the positive experience of awareness and bringing of the whole Russian judicial practice to unity. For example, the Letter No. 204P13 of the Supreme Court dated 31 January 2014 indicated the Resolution adopted by the Presidium of the Russian SC,¹⁷ which resumed the proceedings at the proposal of the Chairman of the Supreme Court of the Russian Federation in view of the new circumstances that emerged due to

¹⁴ Определение Конституционного Суда Российской Федерации от 7 февраля 2013 года № 250-О “По жалобе гражданки Костаревой Людмилы Ивановны на нарушение ее конституционных прав положениями части девятой статьи 115 и статьи 154 Уголовно-процессуального кодекса Российской Федерации”, СПС Право: <http://docs.pravo.ru/document/view/67159310> (дата обращения: 04.04.2015) [Ruling No. 250-O of the Constitutional Court of the Russian Federation dated 7 February 2013 “Regarding the complaint of Ms Kostareva, Lyudmila Ivanovna, concerning the violation of the constitutional rights by provisions of the ninth part of Article 115 and Article 154 of the Criminal Procedure Code of the Russian Federation”, Law Reference System Pravo: <http://docs.pravo.ru/document/view/67159310> (application date: 04.04.2015)].

¹⁵ Постановление Президиума Верховного Суда РФ от 25.09.2013 № 128П13, ВВС РФ. 2014, № 2 [Resolution of the Presidium of the Supreme Court of the Russian Federation No. 128P13 dated 25 September 2013, Bulletin of the Supreme Court of the Russian Federation No. 2, 2014], p. 9.

¹⁶ Отдел Аппарата Верховного Суда РФ по организационному обеспечению контроля исполнения постановлений Европейского Суда по правам человека и решений Конституционного Суда Российской Федерации (отдел Аппарата ВС РФ) [Department of the Administrative Office of the Supreme Court of the Russian Federation for organizational maintenance of supervision over the implementation of the European Court of Human Rights’ judgments and decisions of the Constitutional Court of the Russian Federation (the Russian SC Administrative Office Department)].

¹⁷ Постановление Президиума Верховного Суда РФ от 25.12.2013 № 315-П13ПР. В случае если существенно значимые обстоятельства, являющиеся предметом рассмотрения по уголовному делу, отражены в судебном акте неверно, он не может рассматриваться как справедливый акт правосудия и должен быть исправлен независимо от того, что послужило причиной его неправосудности. [Resolution of the Presidium of the Supreme Court of the Russian Federation No. 315-P13PR dated 25 December 2013. If essential circumstances, which are the subject of the criminal proceedings, reflected in the judicial act are wrong, such an act cannot be regarded as a fair act of justice and should be corrected, regardless of the reason of its illegitimacy.].

the Resolution of the Russian CC.¹⁸ Besides, the Russian SC Administrative Office Department provides the information on individual measures taken in respect of the Russian citizens' complaints considered by the Constitutional Court of the Russian Federation.

Since 2013, the Constitutional Court of the Russian Federation has continued to prepare quarterly reviews of the practice of the decisions issued that are posted on the official website of the Russian CC and submitted to the Russian SC for information. According to the feedback from the law enforcers, the applied practice gave rise to certain interest in arbitration courts and general courts.

According to Russian researchers, the practice of the Constitutional Court and the Supreme Court of the Russian Federation contributes to the "cleanup" of the national legal system from the conflict of legal provisions and the rules of law that contradict the Constitution of the Russian Federation, thereby strengthening the common understanding of regulatory legal acts.¹⁹ Ensuring of the rule of constitutional provisions²⁰ is the basis for the implementation of granted powers of the Russian CC and SC in terms of achieving the case law uniformity.

In addition, in order to ensure the case law uniformity, federal lawmakers introduced the following rules to the procedural codes:

- in the Code of Civil Procedure of the Russian Federation – "the recognition by the Russian Constitutional Court of the law applied in a particular case as

¹⁸ See: Постановление Конституционного Суда РФ от 16 мая 2007 г. № 6-П по делу о проверке конституционности положений статей 237, 413 и 418 Уголовно-процессуального кодекса Российской Федерации в связи с запросом Президиума Курганского областного суда, *Российская газета*, 12 мая 2007 [Resolution of the Constitutional Court of the Russian Federation No. 6-P dated 16 May 2007 in the case concerning the revision of constitutionality of Articles 237, 413, and 418 of the Criminal Procedure Code of the Russian Federation upon request of the Presidium of the Kurgan Regional Court, *Rossiyskaya Gazeta*, 12 May 2007].

¹⁹ See: Е.А. Ершова, В.Н. Корнев, *Прямое применение Конституции к трудовым отношениям: современные проблемы теории и практики*, *Российское правосудие* № 6 (74), 2012 [E.A. Ershova, V.N. Kornev, Direct application of the Constitution to labour relations: Modern theory and practice, *Russian Justice* No. 6 (74), 2012], pp. 59–64; Л.В. Лазарев, Т.Г. Морщакова, Б.А. Страшун, *Конституция Российской Федерации в решениях Конституционного Суда России*, Москва 2005 [L.V. Lazarev, T.G. Morshchakova, B.A. Strashun, *The Constitution of the Russian Federation in the decisions of the Constitutional Court of Russia*, Moscow 2005], p. 8.

²⁰ В.В. Ершов, *Правовая природа правовых позиций суда*, *Российское правосудие* № 6 (86), 2013 [V.V. Ershov, The legal nature of the legal positions of courts, *Russian Justice* No. 6 (86), 2013], pp. 37–47; В.В. Ершов, *Судебная власть и правосудие в Российской Федерации*, Москва 2011 [V.V. Ershov, *The judicial power and justice in the Russian Federation*, Moscow 2011], p. 900; Н.В. Витрук, *Конституционное правосудие: судебное конституционное право и процесс*, Москва 2011 [N.V. Vitruk, *The constitutional justice: Judicial constitutional law and proceedings*, Moscow 2011], p. 26; Л.В. Лазарев, *Правовые позиции Конституционного Суда России*, Москва 2003 [L.V. Lazarev, *The legal positions of the Constitutional Court of Russia*, Moscow 2003], p. 34; А.В. Малько (ред.), *Краткий юридический словарь*, Москва 2008 [A.V. Malko (ed.), *Small Dictionary of Law*, Moscow 2008], p. 157; М.Б. Смоленский, *Конституционное (государственное) право России*, Ростов 2007 [M.B. Smolenskiy, *The Constitutional (State) Law of Russia*, Rostov 2007], p. 329; Б.С. Эбзеев, *Конституционный Суд России: правовая природа и функции*, [в:] *Конституционное правосудие в Российской Федерации и Германии: материалы круглого стола 9–10 октября 2012 года*, Москва 2013 [B.S. Ebzeyev, *The Constitutional Court of Russia: Legal nature and functions*, [in:] *Constitutional justice in the Russian Federation and Germany: Materials from the Round Table held on 9–10 October 2012*, Moscow 2013], pp. 21–36.

contradicting the Russian Constitution serves as the basis for review of court rulings that have entered into force”;²¹

- in the Criminal Procedure Code of the Russian Federation – “the basis for resumption of the criminal proceedings in view of new or newly arisen circumstances, which include the recognizing by the Constitutional Court of the Russian Federation of the law applied by the court in a criminal case as inconsistent with the Constitution of the Russian Federation”;²²
- in the Arbitration Procedure Code of the Russian Federation – “recognizing by the Constitutional Court of the Russian Federation of the law applied by an arbitration court in a specific case in adopting the decision, in connection with which the applicant has filed a petition with the Constitutional Court of the Russian Federation, as incompliant with the Constitution of the Russian Federation”;²³
- in the Code of Administrative Court Procedure of the Russian Federation – “recognizing by the Constitutional Court of the Russian Federation of the law applied in a specific case in adopting the decision, in connection with which the applicant has filed a petition with the Constitutional Court of the Russian Federation, as incompliant with the Constitution of the Russian Federation”.²⁴

In addition, in April 2015, the Russian SC in its Ruling on the case No. 307-KG14-4737 stated that “(...) the basis for revision of judicial acts due to new circumstances in the applicant’s case, in connection with the adoption of the act by the Constitutional Court of the Russian Federation, is not a specific, adopted judicial act, i.e. the decision which may mean in the legal science the decision, resolution, and ruling, but the identified and worded in a particular judicial act (decision in the generalized sense) constitutional and legal meaning of the rule, that has not been attributed to such rule previously in the course of law enforcement”.²⁵

²¹ П.3, ч.4 ст. 392 Гражданского процессуального кодекса Российской Федерации от 14 ноября 2002 г. № 138-ФЗ (с изменениями и дополнениями от 6 апреля 2015 г.), Российская газета № 220, 20 ноября 2002, [para. 3, part 4 of Art. 392 of the Civil Procedure Code of the Russian Federation dated 14 November 2002, No. 138-FL (as amended on 6 April 2015), Rossiyskaya Gazeta No. 220, 20 November 2002].

²² П. 1, ч. 4. ст. 413 Уголовно-процессуального кодекса Российской Федерации от 18 декабря 2001 г. № 174-ФЗ (с изменениями и дополнениями от 30 марта 2015 г.), Российская газета № 249, 22 декабря 2001 [para. 1, part 4 of Art. 413 of the Criminal Procedure Code of the Russian Federation dated 18 December 2001, No. 174-FL (as amended on 30 March 2015), Rossiyskaya Gazeta No. 249, 22 December 2001].

²³ П.3, ч.3 ст. 311. Арбитражного процессуального кодекса Российской Федерации от 24 июля 2002 г. № 95-ФЗ (с изменениями и дополнениями от 6 апреля 2015 г.), Российская газета № 137, 27 июля 2002 [para. 3, part 3 of Article 311 of the Arbitration Procedure Code of the Russian Federation dated 24 July 2002, No. 95-FL (as amended on 6 April 2015), Rossiyskaya Gazeta No. 137, 27 July 2002].

²⁴ П.3, ч.1 ст. 350 Кодекса административного судопроизводства Российской Федерации от 08 марта 2015 г., № 21-ФЗ (с изменениями и дополнениями от 03 июля 2016 г.), Российская газета № 49, 11 марта 2015 [para. 3, part 1, Art. 350 of the Code of Administrative Court Procedure of the Russian Federation dated 8 March 2015. No. 21-FL (as amended on 3 July 2016), Rossiyskaya Gazeta No. 49, 11 March 2015].

²⁵ Определение Верховного Суда РФ от 21 апреля 2015 г. по делу № 307-КГ14-4737: <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=ARB;n=424834> (дата обращения: 24.11.2016) [Ruling of the Supreme Court No. 307-KG14-4737 dated 21 April 2015], pp. 7–8,

At the same time, we should agree with the Chairman of the Supreme Court of the Russian Federation, who notices plenty of rulings of the Constitutional Court, the text of which “literally does not comply with the current rules of the Criminal Procedure Code and introduces certain difficulties in law enforcement”.²⁶

Summarizing, it should be noted that in addition to the above procedural mechanisms, we believe that annual discussion of controversial law enforcement issues at a joint meeting of the Russian SC and CC, for example at the Joint Plenum of the Russian SC and CC, will contribute to the achievement of the case law uniformity. General solutions found in this manner would serve the case law unification and the reliability of law, i.e. the implementation of the key values of justice.

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available at: <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=ARB;n=424834> (application date: 24.11.2016).

²⁶ Vyacheslav Lebedev considers it necessary to adopt the new Criminal Code and Criminal Procedure Code, *Pravo.ru*, 18 October 2016, 12:35.

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ON INTERACTION OF THE CONSTITUTIONAL COURT AND THE SUPREME COURT OF THE RUSSIAN FEDERATION TO ENSURE CASE LAW INTEGRITY

Summary

The article discusses the problem of interaction of the Constitutional Court and the Supreme Court of the Russian Federation with respect to case law integrity. The authors present a hypothesis that the merge of the Supreme Arbitration Court and the Supreme Court in the single Supreme Court will improve the interaction between the Constitutional Court and the other courts, including in the field of achieving case law integrity. The uniform case law is considered to be either an essential component and the result of judicial activity or the result of identical qualification of similar cases, and a form of judicial control. The uniform case law should be aimed at promoting the rule of law.

Key words: the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation, judicial control, uniform case law

O RELACJACH SĄDU KONSTYTUCYJNEGO I SĄDU NAJWYŻSZEGO W FEDERACJI ROSYJSKIEJ W ZAKRESIE UJEDNOLICANIA PRAKTYKI SĄDOWEJ

Streszczenie

W artykule poddano analizie kwestie interakcji zachodzących między Sądem Konstytucyjnym i Sądem Najwyższym Federacji Rosyjskiej, w kontekście jednolitości orzecznictwa sądów. Autorzy stawiają hipotezę, że ujednoczeniu orzecznictwa sądowego i poprawie współpracy między Sądem Konstytucyjnym i innymi sądami służyłoby połączenie Naczelnego Sądu Arbitrażowego oraz Sądu Najwyższego w Sąd Najwyższy. Dzięki tej zmianie organizacyjnej można byłoby realizować wartość ustrojową w postaci poprawy efektywności działalności sądowej i spójnego rozstrzygania przez sądy w podobnych sprawach. Z kolei jednolitość orzecznictwa sądowego powinna służyć promowaniu rządów prawa.

Słowa kluczowe: Sąd Konstytucyjny Federacji Rosyjskiej, Sąd Najwyższy Federacji Rosyjskiej, kontrola sądowa, jednolitość orzecznictwa