

# The category of certainty of the Constitutional Court of the Russian Federation's judgments as a legal standard for the implementation of its decisions by the courts

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**Abstract.** This article analyzes the problems of the category of certainty of the decisions of the Constitutional Court of the Russian Federation in the judicial enforcement practice of courts of general and arbitration jurisdiction. The key role played by the Constitutional Court in ensuring the direct action of the “living” Constitution of the Russian Federation in the work of the courts is substantiated. The certainty and uncertainty of the implementation of the judgments of the Constitutional Court as the paired legal categories in judicial law enforcement practice are analyzed. Their content side is disclosed. It is noted that the failure to comply with the requirements of the category of certainty of the decisions of the Constitutional Court leads to ambiguity, incorrectness, and also complicates the process of their implementation by judicial instances. Taking into account the foregoing, the regulation of relations is not based on the uniform practice of law enforcement that entails a violation of rights and legitimate interests of specific applicants and an indefinite number of persons. It is also explained in the paper that in the judicial law enforcement practice, the main task of constitutional law is the certainty of the text of decisions of the Constitutional Court. Theoretical problems in the sphere of the domestic constitutional justice, which are of theoretical and practical importance for ensuring the unity and consistency of judicial enforcement practice, have been developed. Conclusions referring to the problem under study are drawn and suggestions are made.

Decisions of the Constitutional Court of the Russian Federation (the Constitutional Court, the Court) often contain legal positions aimed at the optimization of the current legal regulation, inter alia, by eliminating its uncertainty and inconsistency.

The requirement of legal certainty for the implementation of decisions of the Constitutional Court is one of the aspects of the rule of law principles and extends not only to the norms of positive law, but also to the judicial enforcement practice. At the same time, the requirements for legal certainty apply not only to judicial decisions of various courts of general jurisdiction and arbitration courts, but also to acts of the Constitutional Court.

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It should be noted that the operative part of the final decisions often contain conclusions on the need to review the applicant's case, if there are no other obstacles for this. Such conclusions can be contained both in judgments on recognizing norms as not complying with the Constitution of the Russian Federation (hereinafter - the Constitution), and on the recognition of provisions as constitutional in the identified constitutional-legal sense. So, in 2016, the Constitutional Court adopted 17 resolutions, in the operative part of which was an order to review the applicant's case. The legal consequences of such conclusions are equivalent regardless of the form of the final decision (recognition of the norm as constitutional or unconstitutional) [1].

The Federal Constitutional Law of 21.07.1994 No. 1-FKZ “On the Constitutional Court of the Russian Federation” was amended to eliminate the uncertainty in the judicial authorities' understanding of the question of the legal force of such decisions [2].

In addition, recognition of the normative provisions as unconstitutional requires the prompt response of the federal legislator to introduce appropriate legislative changes to fill the gap created by the decision of the Constitutional Court. With a view to eliminate legal uncertainty, the Constitutional Court, in some cases, formulates positions setting guidelines that should be followed by the law enforcer until appropriate legislative changes are made [3].

In this regard, we should agree with the statement of N.A. Vlasenko and T.N. Nazarenko that the lack of certainty in the content of law and the forms of its expression makes it impossible to regulate social relations [4].

Without the principle of the rule of law, it is impossible to establish law and order, and this is a consequence of the existence of collisions and gaps in the law.

Undoubtedly, when examining specific cases, judges must, in accordance with the letter of the law, apply the requirement of legal certainty.

At the same time, the requirements of legal certainty do not create difficulties in resuming the proceedings in connection with the emergence of new circumstances or when there are significant violations that were committed at the previous stages of the process and led to a wrong resolution of the case.

At the same time, it should be noted that an unreasonable increase in the number of cassation and supervisory instances also does not meet the requirements of legal certainty and the purpose of these judicial proceedings as additional means to ensure the justice of judgments that is inconsistent with the principle of legal certainty arising from the Constitution and the principle of stability of judicial acts based on it.

So, for example, referring to the definition of the Constitutional Court of 25.09.2014 No. 2031-0, the Court pointed out that the introduction of additional procedural mechanisms for verifying a valid court decision does not imply granting an unlimited opportunity to a person to demand revision and the procedure for judicial review [5].

In his time, R. Coase wrote: “It would be desirable for the courts to understand the economic consequences of their decisions and take these consequences into account in their decisions to the extent possible without creating excessive legal uncertainty” [6].

I have to note that the courts of general jurisdiction and arbitration courts are under the continuous impact of real life social processes, and they are thus associated with the pressing needs of the development of the legislation of the Russian Federation. In turn, the decisions of the Constitutional Court eliminate the existing shortcomings of the normative and legal regulation, and give the completeness, accuracy and certainty of the legal regulation of public relations to the norms of law.

At the same time, often decisions of the courts are not consistent with the Constitution and with the legal positions of the Constitutional Court, expressed in the judgments and rulings of the Court.

In this connection, issues of application of the decisions of the Constitutional Court by other courts are of special interest in the scientific and practical sense. Herewith, the practice of courts applying the decisions of the Constitutional Court differs with unjustified differences in approaches and in the evaluation of the current legislation.

Contemporary approaches of domestic constitutional scientists to judicial enforcement of its essence, analysis and methods for revealing the certainty and uncertainty of the execution of decisions of the Constitutional Court in the law-enforcement practice of judges of different courts are determined by the legal worldview of a particular author and his understanding of laws.

Failure to comply with judicial acts is a problem of the whole legal system of the Russian Federation, and the problem of all courts, including the Constitutional Court [7]. A.R. Sultanov believes that “Modernizing the procedural legislation, one must proceed from the premise that all judicial formalities and procedures exist only to ensure the issuance of legal acts and the exclusion of unjust acts” [8].

So, in accordance with Article 79 of the Federal Constitutional Law of 21.07.1994 No. 1-FKZ “On the Constitutional Court of the Russian Federation”, courts of general jurisdiction and arbitration courts in cases after the entry into force of the Constitutional Court decision (including cases for which proceedings are instituted before entry into force this decision of the Constitutional Court) are not entitled to be governed by a normative act or its separate provisions recognized by this Constitutional Court decision as not in conformity with the Constitution, or apply the normative act or some of its provisions in an interpretation that is divergent from this Constitutional Court in interpretation of this resolution” [9].

Wrong understanding and interpretation of the legal positions of the decisions of the Constitutional Court by the courts leads to an arbitrary application of the normative provisions of the legislation of the Russian Federation, a superficial examination of the factual and normative basis of the case, an accusatory or justifiable deviation in the implementation of regulatory and legal requirements and, as a consequence, to a violation of legality.

I have to note that the procedure for implementing decisions of the Constitutional Court in judicial law enforcement practice is directly related to how the rules of law are expressed in the legislation of the Russian Federation.

In this regard, the role of such technical and legal quality of law as its certainty increases. At the same time, intensive changes in existing legal norms and adoption of new norms objectively contribute to the appearance of a significant risk of technical and legal defects in law, among which “the uncertainty” should be distinguished.

In turn, the uncertainty of the rule of law implies the imperfection of legal regulation, the inaccurate, incomplete and unclear use of unsettled, ambiguous terms and categories of the evaluation character, the uncertainty of terms, conditions or grounds for decision-making, the existence of duplicative powers of a state body, local government or organization (and organization officials), the existence of other legal and linguistic uncertainties, which establish for the law enforcers unreasonably broad limits of discretion, or the possibility of unreasonable application of exceptions to general rules, as well as inconsistent securing and implementation of its regulations through their arbitrary interpretation and application in judicial enforcement practice.

On the basis of the foregoing, I would note that the uncertainty is an incomplete and inaccurate understanding of a decision of the Constitutional Court by the courts, which arises from ignorance of objective trends and patterns, according to which this or that process develops.

In turn, the requirement of legal certainty implies a uniform interpretation and application in the law enforcement practice.

The decisions of the Constitutional Court have a direct impact on law enforcement jurisprudence, without replacing the law, by which the courts must be guided, but serve as a precedent for understanding and applying the relevant regulatory legal act.

The decision of the Constitutional Court does not create new rules of law, in the process of official interpretation by the Court of the auditable normative legal act for compliance with its Constitution.

Herewith, legal acts of the Constitutional Court contribute to the establishment of procedural legislation in the Russian Federation, by introducing appropriate changes in regulatory legal acts on the basis of its decisions, which allows to some extent eliminating the insufficient systemic, contradictory and spurious characteristics of the current legislation of the Russian Federation.

The Constitutional Court provides a systemic interpretation of the norms of the legislation of the Russian Federation, so that the decisions of the courts of general jurisdiction and arbitration courts must comply with its legal positions that provides for a unified systemic and consistent interpretation of regulatory and legal acts by courts and other law enforcement agencies.

Of course, there are still many “blank spots” in this issue. Some provisions need new approaches, which will require its further study in the theory and use of the results of new theoretical studies in the judicial enforcement practice of courts of general and arbitration jurisdiction.

## References

1. *Federal Constitutional Law of 21.07.1994 No. 1-FKZ “On the Constitutional Court of the Russian Federation”* (1994)
2. Constitutional Court of the Russian Federation, *Definition of the Constitutional Court of the Russian Federation of September 25, 2014 No. 2031-O “On refusal to accept the complaint of citizen Yermakov Sergey Aleksandrovich for violation of his constitutional rights by Article 401.1 and part one of Article 401.15 of the Code of Criminal Procedure of the Russian Federation”* (2014)
3. N. A. Vlasenko, T. N. Nazarenko, *State and Law*, **6** (2007)
4. R. Coase, *Firm, market and law* (Moscow, 2007)
5. T. N. Nazarenko, *Uncertainty in the Russian law: Author's abstract of the dissertation of the Candidate of Legal Sciences* (Moscow, 2006)
6. A. R. Sultanov, *Journal of Russian Law*, **153**, 9 (2009)
7. <http://www.ksrf.ru/ru/Info/Maintenance/Informationks/Pages/ReportKS2016.aspx> (Date of circulation: 04.22.2018).
8. A. R. Sultanov, *Modernizing the key concepts of Constitutional Law* (Moscow, 2018)
9. *The Federal Constitutional Law of 21.07.1994 No. 1-FKZ “On the Constitutional Court of the Russian Federation”* (Moscow, 1994)