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Constitutional Justice of the New Democracies
in the Conditions of Modern Challenges and Threats
(materials for a speech)

Constitutional justice in the countries of new democracy in chronological sense is basically approximating its majority; its history as a whole duplicates the history of our new – ideologically, politically, sometimes geographically – states, reflecting various changes in political landscape and more often – political weather. Having almost two decades (in some countries, where organs of quasi-constitutional justice were organized under socialism, even more) of functioning and evolution, the organs of constitutional control in our countries may begin to reckon up and evaluate their own activity and practices in historical context.
Abrupt transition from totalitarian regimes to the announcement of democracy in the 80-s and 90-s of the past century – essentially, political revolution of the end of the XX century – resulted in the fact that from the very beginning the models of constitutional justice in the new states demonstrated maximal level of guarantees of human rights and freedoms, introduction of wide possibilities of their realization, sometimes wider than in traditional "old" western democracies, some of which only at present introduce relevant mechanisms.
The right to individual complaint appeared in the post-Soviet and Eastern-European space almost two decades ago.
Mechanisms of most wide constitutional control with the creation of special organs (courts) and the right to the individual constitutional complaint – directly or through other organs (so called concentrated "Austrian model") – were established in the legislation of the majority of Eastern-European countries and those of the post-Soviet space: Albania, Armenia, Azerbaijan, Croatia, Czech Republic, Georgia, Hungary, Kyrgyzstan, Latvia, Montenegro, Poland, Romania, Russia, Serbia, Slovakia, Slovenia, Former Yugoslav Republic of Macedonia, Ukraine.
It can be said that appearance of this new wave of constitutional justice pre-determined trend dominating today in a global scale – to spread mechanisms aimed at the protection of individual subjective rights; meanwhile the defence of the constitutional order also begins to be realized through individualization of the forms of constitutional control.
It is obvious, however, that for such an abrupt, practically revolutionary transformation from totalitarian regulation to democratic regime not only legislative fixation of the relevant institutions and procedures was needed, but rather developed legal culture and well-sharpened mechanisms of inter-relation of the constitutional courts, first, with other branches of state power, and, second, with other courts. Lack of the said mechanisms and developed legal culture caused general problems which face the organs of constitutional control of our countries. In the present report I would like to emphasize some of these problems in relation to the Constitutional Court of the Russian Federation, but I think that they are essential for the majority of courts represented here.

1. Constitutional Court in the system of separation of powers and in the structure of judicial power
Constitution expresses principles of rule of law and state of law (Rechtstaat). State and law are not different things put in different pockets, not two contradicting essences. Especially as the topic is modern civilized state based on the principles of supremacy of law and democracy, separation of powers and admission of inborn and inalienable rights and freedoms of the human being and citizen. Therefore, the state is inside the field of law and it must act as a lawful subject. Supremacy of law is impossible without separation of powers. The Constitution of the Russian Federation, fixing this principle, contemplates three branches of state power: legislative, executive and judicial. And here judicial power in its significance is not "number three" – it is one of the three. Sometimes they speak of presidential power as power number four. This disputable doctrine is usually associated with the name of Benjamin Constant who disputed it for Napoleon. But with such an approach separation of powers (legislation – executive activity – decision of disputes on rights) looses sense. Three branches – in this triangle only can the Divine Origin manifest itself both in legislation and law-enforcement.
The state power may be kept within the constitutional framework with the help of the mechanism of checks and balances which is contained in the Constitution. In the period of transition the executive power carries more burden. It is more active by its nature. But this does not eliminate the idea of three powers. The task of the

President as head of state and guarantor of the Constitution is to ensure interaction and concordance of powers. Courts and the legislator also promote interaction and concordance through their relative competencies. The task of state power in its three hypostases is to eliminate actual and potential conflicts and contradictions, remaining within the supremacy of law.

The function of the Constitutional Court can be defined as forming (or, more precisely, objectification) of constitutionally-justified expediency. That is, the Court evaluates constitutionality of legal acts and competency of organs of state power on the base of interpretation of the principle of separation of powers in its systematic connection with other constitutional principles and values, bearing in mind the concrete historic situation and the needs of society. Guided by the principle of proportionality, the Constitutional Court weighs constitutionally-protected values and finally finds their balance. This compromise expresses itself in the development of legal positions and the Court's doctrine. Thus, disputing the principle of separation of powers, the Constitutional Court must not loose reasonable flexibility in its interpretation. Its task is – with due regard to the changing reality, always on the base of the main principle of the separation of powers to seek and find expedient and just compromise, demonstrating flexibility and supporting necessary balance among branches of powers. Therefore, the Court's interpretation of the principle of separation of powers as well as relevant constitutional provisions, their letter and spirit, becomes inevitable.

Generally speaking, normative regulation of social life, determination of contents of external and internal policy, including economic policy (which is the prerogative of legislative and executive, but not judicial power), by their nature – as the art of the possible – presupposes potential possibility of different, sometimes alternative ways of solution of tasks. From juridical point of view, this is somewhat a zone of "definite indefinite". Meanwhile, in practice many questions related to separation of powers and distribution of competence among them are resolved through political agreements ad hoc, reached without reasonable correlation with constitutional provisions.

While verifying constitutionality of a law, the Constitutional Court by its decisions must not block these essential features of normative regulation. Acting otherwise, it would substitute for other branches of power with their own discretion.

In practice, however, the fulfillment of this function often leads to a hidden conflict of competencies of organs of constitutional control and the legislator.

It is not in the nature of organ of constitutional justice to create laws or implement them. It is intended solely for carrying out judicial power through constitutional judicial proceedings on cases arising from questioning of normative acts, debates on competences etc. Constitutional control aimed at protection of the Constitution, of basic human rights and freedoms – this is a quintessence of constitutional justice.

But here a collision objectively arises between the principle of representative democracy according to which the laws are adopted by the Federal Assembly – the Parliament as representative and legislative organ of the Russian Federation, and opposing principle of judicial control of constitutionality, by virtue of which the Constitutional Court can repudiate an act coming from representatives of the people (strictly speaking, this competence of the Court must be relevant to acts adopted at the referendum, in which case the Constitutional Court may be forced to take decision rejecting direct will of the population).

The overcoming of unconstitutional law, i.e. act of representative democracy, by constitutional justice, not always finds understanding, especially when both the law and the Court's decision affect most critical problems of society, on which there is no consolidated citizens' position.

Thus, the Constitutional Court objectively acts as a check and balance for institutes of representative democracy, legislator in the first place, preventing him from moving outside the field of law and thus guaranteeing functioning of democracy in accordance with the principle of supremacy of law. With the help of constitutional control the possibility to misuse institutions of democracy, when arbitrariness may take form of a law, is legitimately averted.

Nevertheless, it is important to realize that the Constitutional Court's competence is a mighty weapon, because it decides whether a legal act will be in force, how a constitutional provision shall be interpreted, to which state organ certain competence belongs, and so forth.

Such a weapon must be used with maximum care, in order not break the balance with the legislator as well as the balance of constitutionally-significant values in relations regulated by the questioned norm. If organ of constitutional justice constantly breaks these balances, the question reasonably arises about its abundant and excessively wide prerogatives. The "pendulum" can then swing in the opposite direction, thus depriving the organ of constitutional justice its possibility to effectively carry out its function to protect constitutional order.

2. Constitutional Court and politics

Constitutional Court rules exclusively on matters of law. Hearing cases on constitutionality of laws and other normative legal acts, it evaluates them from the point of view of law and not economic or political expediency. But

it would be a great error to conclude from here that the Court is torn away from politics. If politics is considered as struggle of various political parties and groups for power and adoption of certain imperious decisions, the Constitutional Court takes no part in this struggle; its decisions are impartial, criteria for them are principles and norms of the Constitution and not standpoints or interests of any state organs, parties or persons. In this context the Constitutional Court occupies a specific place in the political system. Being an organ of state power, it acts at the same time as an arbiter between the state, on the one hand, and the citizens and society, on the other. As one of the supreme state organs, it is in the focus of politics. Its rulings outline constitutional limits of State powers' activities and thus enormously influence politics. It does not consider norms and competence of state power from the point of view of political and economic expediency of actions taken within the framework of these norms and competencies; the Court rules on their juridical expediency, i.e. on the admissibility of these norms and competencies in the system of existing constitutional law co-ordinates. Thus, it plays the role of repository of the living Constitution and therefore of the constitutional policy, in particular, financial and economic policy.

We, the constitutional judges, examine conflicts loaded with huge political energy. But it is not important for us, how this energy functions in politics as such. What is important for us, is that any, the most energetic political action shall take place in a certain framework, and not break it.

One of the chief dangers which lie in wait for organs of constitutional control in search of such framework, edges of the admissible, is what may be called "temptation of relativism".

As outstanding Russian philosopher and lawyer Ivan Ilyin wrote, "political relativism, within which finally "everything is conditional and everything is relative"… brings the humanity into one of the most dangerous paradoxes". He knew what he was writing about, because had survived one such "bloody paradox" himself. Having hardly avoided execution by shooting in Russia, deprived of Motherland, almost exterminated by Nazis in Germany, Ilyin saw with his own eyes what can be the result of the wish to establish the theory of relativity of values, norms, rules and practices, introduce "Gottentot morals" in civilized world. It leads to absolutisation of immediate interests fraught with fabulously – in historical standards – prompt collapse of society and state.

The Russian society encountered one of the last manifests of this theory in its recent history, in 1992-1993, when within the new liberal-democratic elite (including its representatives in the juridical circles) more and more often the voices could be heard about "unconstitutional Constitution", the observance of which was not obligatory (the subject-matter then was Constitution of RSFSR of 1978 with significant amendments made in 1989-1992. As a result, it became "Constitution of the Russian Federation", the provisions on the "leading and guiding role" of the Communist party were excluded, and new provisions were introduced – on the principles of protection of human rights, inviolability of private property, state of law, separation of powers, as well as provisions on introduction and activity of the Constitutional Court). It is well known, what these calls led to in 1993: dispersal of parliament, tank shooting on the parliament building and long drawn-out political crisis, and what is the most important – to undermining citizens' confidence in democratic institutions and to crisis of legal conscience, the fruits of which we still reap.

One of the examples of different answer to the challenge of relativism is recent ruling of the Constitutional Court of the Czech Republic on the question of compatibility of the Lisbon treaty with the country's constitution. It is not my intention to analyze political aspects of this case, I would only like to underline exclusively juridical aspect, with which the Czech Constitutional Court approached this problem, related to a multiple complex of questions of combination of the state sovereignty of the Czech Republic and expanding competence of the European Union. Without deviation to the right or to the left, without inclination to any political views the Court carried out juridical analysis of the situation and came to conclusions based on the letter and spirit of the Constitution of Czechia.

Suchlike approach is a good defence against political relativism of any sort. The Constitutional Court of Russia in its practice proceeds from the idea that constitutional values form systematic unity and find themselves in a specific hierarchic co-ordination. The important task, while realizing constitutional provisions, is to keep up balance and proportionality among constitutionally-protected values, goals and interests. And here inadmissible are both substitution of one value by another and its disparagement at the cost of the other value. The Constitutional Court of the Russian Federation proceeds from these statements and, in order to protect the basics of constitutional order, basic rights and freedoms of person and citizen, maintenance of supremacy and direct effect of the Constitution on the whole territory of Russia, examines normative acts and resolves cases bearing in mind the necessity to keep up proportionality of constitutionally-protected values and the ends persued.

3. Constitutional Justice and Social Effects of Global Financial and Economic Crisis

Discussing today the issue of human rights respect we may not stand aside from the emergency situation coming across the planet incredibly fast due to the globalization. I mean the global financial and economic crisis and its possible negative consequences.

Global financial and economic crisis, as seen by an economist, has been caused primarily by the violation of laws of economics. At the same time, this crisis witnesses of the deformation of principles of law taking place either in

the legislation governing the economy and in the corresponding practice of application of legal norms in the areas of financial and economic activities. First of all, it follows from an improper application of such universal imperatives of law as the principle of formal equality (or legal fairness) and the legal equivalent derived from it. Economic activity may be done within the legal framework only when it is exercised in consistent observance of these universal governing principles. Obviously, the legislatures failed to establish proper legal tools (including liability) able to sustain similar crises. And the politicians, economists and lawyers, in their turn, failed to be high professionals able to foresee and prevent the present crisis. As seen by a lawyer, a real threat of financial and economic pandemia has resulted form the different distortions of the rule of law in the economy, both within national systems and on the global level. These distortions include ineffective legislation, unprofessional and improper acts of State officials and corporate managers, including doubtful and illegal financial "pyramids", both created in the national states or of a transnational nature. These factors altogether have led to the perverted concretization of legal principles in the area of regulation of modern economy and finances, as well as to the deformation of rights and duties of participants of economic relationships, including states and international financial institutions.

The crisis has revealed as well the unsoundness of classical liberal doctrine of law seen as a sort of formal equality (equality between an act and its result in the context of equal for all measure of freedom), which does not imply any adjustment in the area of social relationships taking with account taken of social and biological differences of humans as subjects of law. This doctrine is a source of an opinion that social rights are not the rights strictu sensu and that social politics is a sort of charity born from political appropriateness, and no more than the help to the poor on the part of the State and at the expense of the rich.

However, the formal equality in its two aspects – as equalizing fairness and distributive fairness – logically implies the abolishment of primordially existing inequality through creating of initial equal possibilities in the use of rights and freedoms. This idea acquires more and more support in the context of modern global processes when becomes obvious the insufficiency of traditional – liberal- classification of human rights and freedoms for the realization of a man's capacities as homo sapiens having the freedom of will.

The Russian Constitution presumes that social politics based on the principle of social state is not by its nature just a sort of a charity caused by the feeling of compassion to the unprotected strata of population. This is primarily the constitutional duty of State to guarantee and protect social rights as the essential and inalienable rights on the basis of legal fairness (so-called distributive, or proportional, fairness), presuming legal universality and formal equality.

Therefore, society (as represented by State) using necessary compensatory tools provides for the equality of initial opportunities for its weakest members in realization of their fundamental rights and freedoms. This activity, implying as well the possibility of legislative restriction of stronger subjects (including through the tax instruments) should not be arbitrary nor based only on the considerations of political reasonableness or moral feeling of compassion and help. It allows to correct the initial inequality on the basis of the principle of legal equality, determined in legal regulation on each historical stage with account of the current resources of humanity, as well as to create for persons who are weak from social and biological points of view the equality of initial opportunities in using their rights. Otherwise the advantage of the "stronger" rises not due to their efforts and talents, but due to the resources inherited by them (the effect of "accumulated advantage"). Consequently, distorted is the real sense of the fairness – both distributive and equalizing – that is, of the legal equality as the fundamental principle of legal regulation in whole. As a result, society finds itself in "the trap of inequality". Such a regulation does not guarantee the effective protection of human interests and is incapable to ensure the survival and development of the civilization.

Contemporary constitutional doctrine and practice are called for to ensure the interpretation and implementation of the principle of legal equality in the area of social rights and their content, with account taken of the particular social conditions, challenges and responses.

Constitutional justice is faced with the same task. The interpretation of normative provisions on social state, legal equality and fairness (in its two aspects – "equalizing" and "distributive") in the regulation, ensuring and protection of social rights has allowed the Constitutional Court to work out the legal positions of special importance for legislative regulation of relationships in the area of social protection and conducting of uniform social politics.

Within the framework of the financial crisis there is a temptation to resolve all the issues on the basis of priority of interests of economic development, as the economy being the basis of independent existence and development of society. However, as it was mentioned above, such a one-sided approach should not be considered as an element of modern paradigm of social development.

Disproportions in social legislation require the increase of the effectiveness of the constitutional justice in protection of social rights, ensuring of constitutional principles of fairness and social state.

Justice is aimed at playing a significant role in guaranteeing the equal conditions in political, economic and social and cultural areas.

Legal institutes may and must contribute to the protection of political rights of citizens and to restraining of the elites' powers. They may and must provide for equal economic opportunities, protecting/ensuring ownership rights of all the citizens and guaranteeing the ban for discrimination in market relationships.

Issues of ensuring the citizens' social rights in the practice of constitutional justice have recently began more and more to prevail over the issues of protection of political rights. This proportion is not unfounded and it is rather symbolic. It witnesses of the two trends crossing. The first one is the trend for political stabilization that decreases the urgency of purely political disputes and, as recent sociological researches show, the interest of population to the politics and political involvement has declined dramatically. The second trend deals with the deeper economic reforms which reach their most important stage where they begin to affect the interests of wide sections of the population with economic changes affecting the mode of life, that is directly the social area. In this sense, the constitutional practice is a sort of litmus paper, reflecting the transition of one stage of social development to another. The intensity of this transition may be evaluated, among others, according to the nature and proportion of applications to constitutional courts.

The applications concerning social protection issues constitute today a substantial part of the total number of applications to the Constitutional Court of Russia.

It should be understood that transition from the predominance of the applications involving political issues to those facing social issues does not necessary witnesses of the decrease in social tension. It is rather the evidence of the change in the forms of this tension, as in a situation of stability social conflicts should be resolved through the political contest of the representatives of different social groups and classes and not through direct appeal to courts.

The acuteness of social issues examined by the Constitutional Court of Russia has been often caused by their correlation, more or less, with the crucial issue of distribution of "the reforms burden" between different social groups and attributing of responsibility for the introduced reforms – both moral and financial -, and between society and state.

The practice of constitutional justice is obliged to give answers to one of the key issues of the transitory period and of any transitory economy: the issue of the possible extent of the reforms. Obviously, no significant changes of social order and economic system are possible without introducing of some social limitations, without shifting of burden carried by society. But the weight of this burden is not unlimited, it is not an absolute but rather a relative measure. When dealing with cases concerning the protection of social rights in the framework of the constitutional justice we are obliged to strike a balance of competing social values on the basis of social fairness, legal equality and proportionality, and thus to impose the limits of reasonable shifting of the social reforms burden.

The Constitutional Court, relying on the provisions of the Russian Constitution, has repeatedly formulated the legal position according to which the legislative alteration (including by means of temporary measures) of the rules established earlier must be made only by the way ensuring the principle of maintaining of public confidence in law and State actions, which implies legal certainty, reasonable stability of legal regulation, inadmissibility of arbitrary changes in existing legislation and predictability of legislative politics in social area. These factors, as well as accuracy and clarity of legal norms used by law-applying bodies, including courts, are necessary so as to the participants of the legal relationships could reasonably foresee the consequences of their conduct and be certain about immutability of their officially recognized status, rights acquired and effectiveness of their protection by the State, that is their rights gained accordingly to current legislation, would be respected by authorities and would be enforced.

4. Enforcement of the Constitutional Court's judgements

All Russian courts at present face the common problem of ineffective enforcement of judicial decisions. Unfortunately, this is partly true for the Constitutional Court, too.

Two sets of issues may be raised in the system of interaction between the constitutional control bodies and other state authorities, including courts of different jurisdiction. First of all, it is effect of the incorporation of constitutional courts into the classical model of the separation of powers, implying hidden and sometimes even open conflicts of powers with both the legislative and the executive caused by the authority conferred to the Constitutional Court to deprive legal acts of their legal force. Secondly, the problem is the interaction and coordination of efforts of constitutional courts and other state courts, which ideally must in common fulfill the function of human rights protection, but in fact often enter in competition in the legal field impeding proper enforcement of constitutional courts' decisions by the bodies having a primary duty of the implementation of these decisions to the legal tissue of the State, namely – by the courts of other jurisdictions. It is not as important as that whether a constitutional control body form a part of judicial system or acts as an independent body;

anyway conflict of competence arises from time to time, when the courts of general and sometimes, of special jurisdictions, consider the Constitutional Court's or its analog's activities as the interference in their area of competence (e.g., when the constitutional interpretation of a legal provision or of the mode of its application by other courts its is given by the Constitutional Court). This sort of friction exist even in the countries with matured traditions of constitutional control and, therefore, of interaction between different parts of the judicial system – for instance, in Germany. As to new democracies, the process of recognition of the status of constitutional courts' judgments also was meeting a lot of difficulties even in the countries of "Grupa Wyszehradzka". This process may hardly be considered terminated in any eastern-European country. To describe the relationships between the constitutional and other highest courts, some countries even use the term "judicial wars".

I can see the two sides of this problem: non-enforcement of the Constitutional Court's judgments requiring alteration of legislation (including directions to the legislator to eliminate obvious contradictions and lacunas in legal regulation that lead to the infringement of the citizens' constitutional rights), and non-enforcement of decisions calling for revision of other courts' judicial acts delivered in particular cases with participation of applicants, as well as alteration of law-application practice of courts due to the formulation by the Constitutional Court of legal positions concerning the application of provisions challenged, aimed to avoid the rendering of judicial acts infringing constitutional rights and freedoms.

One of the most flagrant examples of non-enforcement of the Russian Constitutional Court judgments by the legislator is its failure to comply with the Judgment N 1-P of 2001 in the case concerning constitutional review of Article 1070 (paragraph 2) of the Civil Code of the Russian Federation, which provide for the grounds and procedure of indemnity of damage caused in the course of court proceedings by illegal acts or omission of judge. In this Judgment the Constitutional Court ruled that damage caused by miscarriage of justice, including violation of reasonable terms of proceeding, shall be compensated, even if the judge's fault is established not by a court sentence, but by another applicable court decision. By the same Judgment the Court imposed to the legislator the duty to set out a procedure for resolution of the applications for such a compensation. However, this Judgment remains unenforced, that creates considerable difficulties for our country with the European Court of Human Rights, as the failure to establish such a procedure means the failure to create a domestic remedy against the violation of a reasonable time proceeding requirement, which is often stated by the European Court on the part of Russia.

Neither are enforced a range of other directions to the federal legislator contained in the Constitutional Court's decisions and judgments.

It should be mentioned the specificity of this part of the problem of non-enforcement of the Constitutional Court's judgments. The declaration of a norm incompatible with the Constitution, generally does not create any difficulties with the enforcement, but when the Court reveals the constitutional meaning of a norm, such a judgment, unfortunately, does not always become a criterion for adopting correct law-applying acts (including judicial decisions).

Special questions arise in connection with retroactivity of the Constitutional Court's judgments in relation of undetermined group of people. The proble is the following: when the Constitutional Court declares a norm incompatible with the Constitution or reveals its constitutional meaning, the judicial acts, based on this legal norm as it was applied in a particular case of an applicant, generally are subject to review. The question is whether this rule extends to other persons who did not participate in constitutional proceeding (and did not challenge the constitutionality of the norm), but in whose cases this norm had been equally applied? As there is no direct indication governing this case in the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", and in the purpose of providing for legal certainty, we have worked out a following approach to this question in our practice: judicial acts rendered in the cases with participation of persons who did not applied to the Constitutional Court, founded on the legal provisions declared unconstitutional or applied in their interpretation incompatible with the Constitution, are subject to review, if they did not enter into legal force and/or were not enforced. Unfortunately, however, the courts of other jurisdictions do not always implicitly follow these positions of the Constitutional Court concerning the retroactivity of its judgments, and several times we were obliged to return to the question of review and in particular cases to adopt iteratively a decision stating the necessity of review of one or another judicial act. Our legislation lacks the rules on compulsory enforcement of the Constitutional Court's judgments, although ideally their enforcement must be provided for not through compulsory procedures and sanctions but by an efficient mechanism of interaction between different courts as well as by the general high level of the judicial corps' legal conscience. However, this is a time-consuming and laborious task.

5. The role of the Constitutional Court's judgments in the Russian legal system

The issue of improper enforcement of the Constitutional Court's judgments is in many respects due to the lack of uniform point of view on the nature of highest courts' decisions, including those of the Constitutional Court, either in the Russian legal science or practice.

The issue of judicial precedent refers not only to the area of legal theory nor legal science in general. It is rather one of the key problems of contemporary law development in the context of both the law-making and law-applying process.

Specificity of this issue with regard to the analysis of the Constitutional Court's judgments legal nature, follows from the role of the Constitutional Court as subject of law-making process. As a result of its decisions legal acts are declared unconstitutional and lose their legal force that is why decisions by the Constitutional Court have the same scope of application in time, space and subjects as decisions of a law-making body, and consequently, they gain the same normative nature and general significance as normative acts, which is not true for the law-applying acts rendered by courts of general jurisdictions and by State arbitration courts (Judgment by the Constitutional Court of 16 June 1998 in the case of interpretation of certain provisions of Articles 125, 126 and 127 of the Russian Federation Constitution).

Normative component of the Constitutional Court's judgments, its correlation with precedent nature of its decisions, raises a range of important questions before both legal theory and practice:

- correlation of the precedent with other legal norms (of the Constitution, code or law) and the role of the interpretation of law;
- whether the principles and rules of earlier decisions must be taken into account to adopt further decisions in whole or just as a guideline for clarification of particular circumstances of the case;
- how undoubtful their stare decisis is for current and future court decisions;
- how strong the similarity of cases should be for the application of a precedent?

Those questions as many others lately have become very urgent for the Russian legal system – both judicial practice and doctrine.

As we may assert the law-making function of the Constitutional Court, it should be recognized that its decisions acquire precedent nature and become the sources of law.

This approach is logical for the countries coming through significant social, economic and political reforms. Normative regulation in those countries is in constant discrepant development, at one moment lags behind the reforms in course at another passes ahead of it, that creates a need for constitutionalization of sectoral and regional legislation, that is in its implementation to the consistent legal system based on supremacy of the Constitution.

Making of major precedents plays a crucial and even leading role in this process. The precedent nature of the Constitutional Court's decisions is especially apparent in resolution of legal conflicts arising between different levels of legislation: national and international, regional and federal, sectoral and constitutional.

Making of decisions of the Constitutional Court having precedent nature in course of constitutional proceeding is one of the major tools of legal modernization. It is in the framework of this approach where we may compare legal positions of the Constitutional Court (expressed in its judgments) with ratio decidendi in the common law sense of word.

Due to their legal nature, these precedents in the Constitutional Court's activities perform a function of a regulator in the framework of substantial reforms, that is, when legislation changes considerably. At the same time they provide for stability of law. In so doing, the Constitutional Court's activities favor the fulfillment of two parallel functions of law: stabilization (conservative function) and development (dynamic function).

The practice has shown that by creating major precedents on the most painful issues of the reforms in course, the Constitutional Court contributes substantially to stability of social development and, at the same time, it does not impede necessary innovations and changes of the public relationships system.

6. Role of Legal Conscience in Strengthening of the Rule of Law

Apart of the goals and tasks of the Constitutional Court's activities mentioned above I would like to specially dwell on another major issue – the issue of forming of relevant public conscience as a foundation for the transformation of democratic ideas and values into the guideline for the State development.

The problems and difficulties the Constitutional Court of Russia faces today the constitutional courts of "old democracies" ran into about 30 years ago. First of all, this is the problem of "constitutionalization" of conscience – not only of ordinary citizens but also lawyers, state officials and even judges of other courts.

Obviously, the main criteria of democracy are not only the existence of traditional democratic institutions like parliament, free elections, independent courts and independent press, but eventually a real degree of freedom within the legal framework. Therefore it can be said that the respect of fundamental rights and freedoms depends much more on the level of public legal conscience, on well-established traditions and education than on the existence of a written constitution and international declarations. We have to remember that countries like Great

Britain and Israel do not have written constitutions. Even with all possible and necessary tools and institutions aimed to protect human rights and freedoms (such as written constitutions entrenching their catalogue directly in the texts, proper operation of judiciary, including a system of judicial review of state bodies actions and of constitutionality of statutes), real implementation of these tools and reasonableness of legal decisions based on them, including judicial ones, depends, on the one hand, on the legal conscience of legislators and law enforcement bodies, their competence and responsibility, and, on the other hand, on the legal conscience of citizens and their ability to stand up and to fight for their rights.

The geographic position of Russia both in European and Asian regions, its multi-national population, interconnection and, at the same time, discrepancies of cultures etc., makes the adoption of generally recognized values by the Russian society very complicated.

In these conditions the process of real adherence to the rule-of-law principle is long and painful, as human rights culture as an element of social environment requires long time to develop and mature.

I would compare the Constitutional Court with a gardener growing constitutional principles on native soil, although sometimes poor and desert. The Constitutional Court's practice demonstrates the trend that is determined by the Russian Constitution itself, for increase of the role of judiciary in strengthening of interaction between the national and international legal systems, and in more and more active integration of Russia into the international legal space, including the European one.