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Brief of a Dissertation for the Degree of Candidate of Science (Law)

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Rationale of the Research. The Constitutional Court of the Russian Federation is one of the elements of the judicial system focused on solving such most significant and large-scale problem as enforcement of rights and freedoms of man and citizen. Every year, the Constitutional Court of the Russian Federation receives an average of a thousand and a half complaints for its examination, which is illustrative of the trust of people in the highest Russian judicial constitutional control authority.

We should agree with the opinion of the President Constitutional Court of the Russian Federation V. D. Zorkin that the contents of applications sent to the highest judicial constitutional control authority allows ascertaining the aspiration of Russian citizens for legal equality and justice, *scilicet*, for equality of the right to life, for equality before the law and the court, for equality in matters of education, health care, and cultural values.¹ Moreover, in modern constitutional proceedings, the *institution of representation* may be considered one of the key guarantees of exercise of the universal right to judicial protection entrenched in the Fundamental Law of the Russian Federation. This meaning of the institution of representation has been also noted by the Constitutional Court of the Russian Federation itself, which stated in its *ratio decidendi* that “in order to exercise the right to judicial protection, along with other legal remedies, the institution of legal representation is required, which guarantees for the interested person getting competent legal assistance (Art. 48 of the Constitution of the Russian Federation) and, in cases of impossibility of direct (personal) participation in proceedings, access to justice.”²

Constitutional proceedings, apart from its unique specific features, is a relatively young legal phenomenon. With that knowledge in mind, as a result of its conduction, great number of urgent procedural questions arise, among which are those of

¹ See: Speech of the President of the Constitutional Court of the Russian Federation [Electronic Resource]. URL: <https://ksrf.ru/ru/news/Speech/Pages/ViewItem.aspx?ParamId=75> (Access Date: 23.07.2023).

² See: On the Constitutionality of Part 5 of Article 59 of the Arbitrazh Procedure Code of the Russian Federation in Connection with Inquiries of the State Assembly (Kurultai) of the Republic of Bashkortostan, of the Governor of the Yaroslavl Region, the Arbitrazh Court of the Krasnoyarsk Krai, and Complaints of a Number of Legal Entities and Individuals: Ruling of the Constitutional Court of the Russian Federation of 16 July 2004 No. 15-II [15-P] // Collected Legislation of the Russian Federation. 2004. No 31. Art. 3282.

determining the legal status of parties to constitutional proceedings, identifying the specific features of each of them, and ascertaining the purposes of their participation in constitutional proceedings. *Representatives*, exercising their powers in the constitutional procedure, are numbered among such parties.

Constitutional court proceedings, as a very distinct agendum for courts, regulated at the legislative level, in consideration of disputes, requires in its activities a high level of qualification of the parties to the procedure. The requirement in question applies not only to the judges of the Constitutional Court of the Russian Federation, where, in a special law, the special requirements for the status of judges and the judicial appointment system are entrenched, but also to other participants of constitutional proceedings, *scilicet*, representatives. This shows the specific approach of the legislator to the *institution of representation in constitutional proceedings* and to its structural elements.

It may be further noted that, currently, at the doctrinal level, as well as at the level of legislation, it is pointed in the direction of development of representation *as an inter-branch institution*, with a bias for the study of its specificity in each of the types of proceedings existing in Russia. This relevance of the in-depth examination of the institution of representation as an independent institution in different branches of national law suggests its originality in every sphere and its great scientific potential, including that in the sphere of constitutional law. As long ago as more than 20 years, M. I. Braguinsky, a famous Russian scientific legal expert, rightly noted that nearly every branch of both public and private law may use the structure of representation³.

Moreover, in the modern context, there is a discernible trend of *extension of professional legal presentation* with the purpose of ensuring citizen's constitutional right to get competent legal assistance, improvement of its quality and the level of judicial protection, and solving the problem of improvement of the procedural objective. The point at issue is also the forthcoming regulation of legal representation within the limits of the reform of advocacy. Obviously, such modernisation will affect

³ See: *Braguinsky, M. I.* Contract of Delegation // *Economy and Law*. 2001. No. 4. Page 13.

constitutional proceedings, as well, suggesting the rationale of exploring this question in the corresponding sphere of legal relations.

The fact that, after the exclusion of the Russian Federation from the Council of Europe, the question of *import substitution* of European Court of Human Rights (ECHR) has been raised repeatedly is also important. Some specialists, as well as the President of the Russian Federation V. V. Putin, stated that the Constitutional Court of the Russian Federation might become one of alternative vehicles of protection of citizens' rights⁴. We believe that this may lead to growth in applications sent to the highest Russian constitutional control authority for examination and thus updates the issues connected with representatives' carrying out their activities in the constitutional procedure.

Therefore, the above suggests a new stage of development of the institution of representation and the reasonable necessity of identification and analysis of its essential features in constitutional proceedings.

Extent of Prior Research. The institution of representation in constitutional proceedings has heretofore not known to be the subject of any independent monographic scientific research. However, general theoretical developments of representation as an institution have been repeatedly conducted in national legal science.

So, for example, representation has been examined in different branches of law: in administrative law (N. S. Grechkin), in arbitrazh law (L. V. Voytovich and S. O. Koroleva), in civil law (E. S. Aloyan, M. V. Bogomolov, N. A. Bortnikova, A. R. Muratova, R. A. Sidorov, and S. A. Khalatov), in criminal law (M. A. Karpushov, S. S. Shishkin), in labour law (L. V. Zaytseva, T. A. Izbiyenova, and V. V. Chekha) and in business law (Ye. Ya. Tokar). The general issue of representation have been highlighted in papers by S. A. Avakyan, K. V. Kamenskaya, Ye. G. Tarlo, as well as in works by scientists of the pre-revolutionary period (A. Gordon and A. M. Palkhovsky) and of the Soviet period (L. B. Matlin and V. A. Ryassentsev).

⁴ See: Mr. Putin Stated That the Citizens of the Russian Federation Might Apply to the Constitutional Court Instead of ECHR [Electronic Resource]. URL: <https://tass.ru/obschestvo/16530933> (Access Date: 23.07.2023).

Different aspects of representation in conjunction with the constitutional procedure, as well as peculiarities of constitutional court proceedings and activities carried out by the Constitutional Court of the Russian Federation have been touched upon by S. A. Benyaminova, Yu. M. Berdyugina, N. V. Vitruk, V. A. Vitushkin, R. M. Dzhavakhyan, V. D. Zorkin, V. A. Kryazhkov, L. V. Lazarev, I. S. Nazarova, S. V. Narutto, and M. S. Salikov.

The study of the institution of representation appears to be impossible in isolation from advocacy, its specificity, and lawyers acting as representatives in a procedure. The questions of advocacy and the issues of legal representation, as well as the role of advocacy in protection of rights of man and citizen have been considered by Z. Ya. Benyaminova, A. A. Vlassov, A. A. Voronov, A. P. Galoganov, E. Ye. Kolokolova, S. E. Libanova, Yu. I. Rakhimov, T. A. Fedotova, and Ye. M. Khaleppo in their papers.

Undoubtedly, the institution of representation is also associated with the guarantee of getting competent legal assistance. This constitutional right and the mechanisms of its exercise have been explored by A. A. Vassilyev, N. A. Kossolapova, I. V. Krasnov, Ye. S. Lyubovenko, A. L. Mironov, and M. V. Nazarova.

Purpose and Objectives of the Research. The purpose of the dissertation research is the comprehensive cognition of the institution of representation in constitutional proceedings. In order to achieve the purpose in view of the dissertation research, a number of problems are to be solved:

- 1) to reveal the essential peculiarities and significance of representation as a legal institution of constitutional proceedings;
- 2) to establish the specific features of the legal status of a representative in constitutional proceedings and to determine the powers exercised by the representative;
- 3) to classify and to characterise the existing types of representation in constitutional proceedings;
- 4) to analyse the activities of a representative carried out at the stage of submitting an application to the Constitutional Court of the Russian Federation and setting a matter for hearing thereby;

- 5) to discover the participation of a representative in constitutional litigation;
- 6) to find out the areas of concern of representation of public authorities in constitutional proceedings;
- 7) to judge the issues of representation of individuals in the constitutional procedure; and
- 8) to shape the development of the institution of representation in constitutional proceedings of modern-day Russia.

Object and Subject of the Research. The object of the research is constituted by social relations created in connection with carrying out representation activities in the constitutional procedure of the Russian Federation. The subject of the research consists of the norms of substantive and procedural law by which the activities carried out by representatives in constitutional court proceedings are regulated, as well as case materials of the Constitutional Court of the Russian Federation.

Theoretical and Methodological Basis of the Research. The theoretical basis of the research consists of papers by scientists who were concerned with general issues of representation in different chronological periods (S. A. Avakyan, A. Gordon, K. V. Kamenskaya, L. B. Matlin, A. M. Palkhovsky, V. A. Ryassentsev, and Ye. G. Tarlo). Besides, works by scientists (E. S. Aloyan, M. V. Bogomolov, L. V. Voytovich, N. S. Grechkin, L. V. Zaytseva, T. A. Izbiyenova et al.) dedicated to the specific aspects of the institution of representation in different branches of law have been included in it. The theoretical basis also includes papers in which different aspects of representation in conjunction with the constitutional procedure, as well as the discover the participation of a representative constitutional court proceedings and activities carried out by the Constitutional Court of the Russian Federation have been approached (S. A. Benyaminova, Yu. M. Berdyuguina, N. V. Vitruk, V. A. Vitushkin, R. M. Dzhavanyan, V. D. Zorkin, V. A. Kryazhkov, L. V. Lazarev, I. S. Nazarova, S. V. Narutto, and M. S. Salikov).

The methodological basis of the research is represented by the general scientific dialectical method of cognition of socio-legal phenomena, which allows assessing the current state of the institution of representation in constitutional proceedings, shedding

light on its specific features, its significance, and the place occupied by it in constitutional justice, eliciting the problems existing in these social relations, and denote the main directions of further development. Besides the above-referenced method of dialectics, some other general scientific methods have been also used to solve the problems raised. The system-structure method, the logical method, and the functional method have been applied to classify the currently existing types of representation.

The paper also uses some private-scientific and special methods. In order to elicit problematic issues concerning representation of public authorities and individuals, the sociological method and the axiological method have been used. In order to analyse the activities of a representative carried out at different stages of the constitutional procedure, the legalistic method has been used. The method of comparative analysis of legal regulation of the institution of representation in different branches of national procedural law has been also engaged in determination of the peculiarities of the legal status of a representative in the constitutional procedure.

Information Base of the Research. The information base of the research consists of different sources, including a wide range of laws and regulations, draft laws, acts of foreign countries, case materials, literature (books, monographs, and articles in periodical publications and collections, literature in foreign languages, dissertations, and dissertation abstracts), as well as electronic resources.

Scientific Novelty of the Research. The scientific novelty of the research is governed by the fact that it has been for the first time at the level of dissertation research that an attempt has been made to analyse representation in constitutional proceedings and give an integral idea of it as a special institution of law.

As a result of the work conducted, a doctrinal concept and description of the institution of representation in constitutional court proceedings have been presented, as well as its essence and significance in the modern constitutional procedure have been discovered. Besides, much attention has been given to the peculiarities of the legal status of a representative participating in constitutional proceedings. The author's classification of the currently existing types of representatives has been presented. The peculiarities of participation of representatives in different stages of the constitutional

procedure and the specific features of the activities carried out by them have been revealed. On the basis of types of representation distinguished in accordance with one of the criteria (representation of public authorities and representation of individuals in constitutional proceedings) the issues inherent in each of them have been analysed. The directions of currently greatest relevance for the development of the institution of representation have been denoted.

Validity and Credibility of the Results of the Research. The degree of credibility of the results of the research is confirmed by the methodology used when writing the paper for solving the problems raised therein, by studying sufficient scientific literature, by analysing laws in force, and by handling the empirical data obtained as part of the study. In the process of the dissertation research, numerous case materials of the Constitutional Court of the Russian Federation have been used, which also suggests the validity of the conclusions formulated by the author.

Provisions of Scientific Novelty to be Defended:

1. It has been found that the institution of representation in constitutional proceedings is a legislatively separate group of legal norms ensuring integral control of a specific type of legal relations, scilicet, relations created between the representative and the representee, between them and the authority dispensing constitutional justice to achieve a significant *de jure* result in the constitutional procedure. The legal nature of the institution of representation in constitutional proceedings is procedural and this institution is a significant part of the integral common-procedure institution of representation, as well as a systemically important element of the procedure itself (which corresponds to paras 5, 9, 13 of the Passport of Specialty 5.1.2);

2. Representation in constitutional proceedings has been proved to be a diversified legal phenomenon the essence of which lies in a representative's consecutively taking a clearly defined set of actions in the constitutional procedure in accordance with the special procedural and legal powers conferred thereupon in the name and on behalf of the representee with a purpose to render competent legal assistance (which corresponds to paras 5, 9, 13 of the Passport of Specialty 5.1.2);

3. It has been revealed that professional procedural representation in the

Constitutional Court of the Russian Federation becomes a significant part of such a large and multi-faceted sphere as legal representation. The institution of professional representation in constitutional proceedings, as well as in other types of court proceedings existing in Russia, is considered to be one of civil society institutions, as an effective form of interaction of society and state claiming the status of law-governed state. It is to a great extent by means of its existence and development that performance of the function of national standing in administration of justice is ensured, highlighting the special role of the institution of representation in the constitutional procedure.

Professional representation in constitutional proceedings is essential for furtherance of the adversarial principle, since it is obvious that in cases when one of the parties possesses a qualified representative and the other party ensures protection of its legal rights and interests in the Constitutional Court of the Russian Federation on its own, the carrying out of the specified underlying idea is questioned (which corresponds to paras 5, 9, 12, 13 of the Passport of Specialty 5.1.2);

4. Reasons have been given for the facts that the legal status of a representative being a lawyer in constitutional proceedings is special, determined by the Constitutional Court of the Russian Federation Law and a number of other normative acts and that its forming is also in direct relationship to the represented person (persons) fully or partially delegating such person's rights and obligations to achieve a specific *de jure* result to ensure protection of their interests, that a status of a representative in constitutional proceedings possesses a real dynamic nature and without reference to a certain type of representation is a complex *multi-layer* category. A representative, as a participant of the constitutional procedure, acts as a complex integrative category demonstrating not only the manysidedness of the legal relations created in this sphere but also the connections formed between different parties to constitutional proceedings (which corresponds to paras 9 and 13 of the Passport of Specialty 5.1.2);

5. Reasons have been given for the fact that the type of representation in constitutional justice wholly depends, firstly, the type of the case reviewed constitutionally *in judicio*, and, secondly, which is based on the first point, on the party as a party to the constitutional procedure.

The following types of constitutional proceedings should be distinguished within representation:

- at the level of law in force, all the representatives in the constitutional procedure are divided into representatives *ex officio* and other representatives (*per pro*);
- depending on the reasons for creation of representation, it is classified into voluntary representation (a narrower subtype is representation *per procuracionem*) and obligatory representation (by legal representation is meant);
- with taking into account the number of representatives ensuring the protection of interests of a party, we may distinguish between individual and plural representation;
- the time or situation criterion allows talking about representation on a permanent basis (permanent representation) and discrete representation;
- according to the adversarial principle: representatives of the *applicant* party (representatives of the *plaintiff*) representatives of the *defendant* party;
- according to the way of exercise of representative functions: *pro se* (autonomous), joint, and specialised representation;
- the qualitative criterion relating to the party submitting an application to the Constitutional Court of the Russian Federation enables individual (personal) representation to be distinguished from collective representation;
- using the criterion of the party submitting an application to the Constitutional Law of the Russian Federation or acting as the *defendant* party as a basis allows distinguishing between representatives of citizens (their associations) and representative of legal entities, as well as representatives of public authorities (if we make an emphasis on the sphere of affected interests, we may distinguish between representation of public authorities and representation of individuals in constitutional proceedings);
- on the basis of the criteria of professional training, representative are to be divided into qualified (professional) ones and non-qualified (non-professional) ones;
- on the *global* initial level, representation is classified into two large units:

representation in the private spheres of the life of society and representation in the public-law sphere (which corresponds to paras 9 and 13 of the Passport of Specialty 5.1.2);

6. It has been established that at the stage submitting an application and setting a matter for hearing (the form of application is request), authorised representatives in constitutional proceedings perform the following range of actions:

- representing the legal position of the applicant parties;
- assessing the conformity of the application sent with the acceptance criteria;
- drafting the application;
- collecting all the materials and documents necessary for preparing the application, as well as using information from information databases;
- agreeing upon the changes in the grounds for submitting applications with the applicant party (or with structural subdivisions and officials designated by the applicant party);
- ensuring, in the course of building the applicants position, interaction between independent structural subdivisions of the authority from which the request is sent;
- sending supplementary materials to a submitted application by electronic mail;
- receiving notices from the Registry of the Constitutional Court of the Russian Federation and from the Constitutional Court of the Russian Federation;
- coordinating the activities of other representatives (if any exist);
- engaging narrowly focused specialists and scientists for assistance in performing functional duties;
- where rewired, retracting (*per pro* of the applicant party) an application submitted to the Constitutional Court of the Russian Federation before beginning of the trial of an action;
- reporting on the results of examination of an application: listing accepted

cases for trial and refusing to accept for consideration;

- performing other actions associated with representative duties.

Authorised representatives exercise such functions as the representative function *per se*, the information-analysis one, the organisational one, the coordination one, and the control one, as well as the function of coordination. The exercise of the specified complex of functions of a representative for the representative to fulfil at the stage of submitting an application and setting a matter for hearing by the Constitutional Court of the Russian Federation is actually directed at solving the main problem of deciding on further hearing a case within constitutional court proceedings (which corresponds to paras 9, 12, and 13 of the Passport of Specialty 5.1.2);

7. It has been revealed that representatives fulfil a wide range of functions in connection with their participation in the hearing of a case in the order of constitutional proceedings. This functionality may be conventionally divided into three groups:

- Preparation for the litigation (receipt of notices from the Constitutional Court of the Russian Federation; collection and processing of necessary information; execution of documents, including petitions submitted to the reporting judge; preparation of the legal positions, arguments, and reasons to be spoken about in the course of the court hearing; coordination of activities of other representatives, witnesses, experts, and other guests; explanation to a party of the rules of conduct in Court, etc.);

- attending court *per se*, save in the event of consideration of cases without hearing (representing the legal position; making petitions; delivering a closing speech);

- actions on completing of hearing of a case (making petitions; raising objection; implementation of provisional measures, etc.).

The range of preparatory measures taken by the representative is relevant to the appearance in the Constitutional Court of the Russian Federation (which corresponds to paras 9, 12, and 13 of the Passport of Specialty 5.1.2).

8. It has been determined that several areas of concern are inherent in the representation of public authorities in constitutional court proceedings:

- absence of a clear and full legal regulation in such areas of activities carried out by the authorised representative of the President of the Russian Federation in constitutional court proceedings, as approval, interaction, and coordination;

- absence of a single document disclosing the peculiarities of the status of the authorised representative of the Federation Council of the Russian Federation in the Constitutional Court of the Russian Federation;

- absence in the normative legal acts governing the activities of federal public authorities and authorities of state power of constituents of Russia of positions in which the authorised representative of the State Duma of the Russian Federation is mentioned in the constitutional procedure and the peculiarities of interaction with this official;

- the question of approval of the legal position of the authorised representative of the State Duma of the Russian Federation by other representatives of the national legislator in the constitutional procedure;

- the question of the criteria according to which a person is chosen to perform professional duties in the constitutional procedure, associated, among other things, with the issue of political preferences;

- lack of clarity in the question concerning the status of temporary representatives of the Government of the Russian Federation (which corresponds to paras 9 and 13);

9. Issues of representation of individuals in constitutional proceedings have been discovered:

- Absence of the possibility of getting competent legal assistance (representative services) by certain categories of citizens *pro bono* due to the material factor, which is considered as an obstacle in the way of exercising the corresponding right entrenched in Part 1 of Art. 48 of the Constitution of the Russian Federation and is the area of concern of greatest relevance in the representation of individuals in constitutional court proceedings;

- low level of representatives' professionalism and their negligence of their

duties;

- dual nature (for representatives and their clients) of positive definitions.

The first two of the issues depicted, to a certain degree, also exert downward pressure on the workload of the Constitutional Court of the Russian Federation, which expends time in considering applications nonconforming to the legislative criteria of acceptability of applications (which corresponds to paras 5, 9, 12, and 13 of the Passport of Specialty 5.1.2);

10. It has been proved that the *professionalization* of legal representation is currently one of the most up-to-date directions of development of this institution not only within constitutional proceedings, but also for all the existing types of court proceedings in Russia.

Advocacy is the platform on which the institution of representation in constitutional court proceedings will be able to develop in an active and effective way. It is on the basis of advocacy, which currently possesses a comprehensive legislative regulation, that a high quality professional institution of representatives may be built specialised in constitutional-legal relations.

Three groups of measures the implementation of which will become a meaningful and effective step on the way to *professionalization* of the institution of representation in constitutional proceedings may be singled out:

- tightening the order of getting of the *general* status of lawyer;
- introducing lawyers' specialisation;
- imposing tightened control of the activities carried out by lawyers (which corresponds to paras 9, 12, and 13 of the Passport of Specialty 5.1.2).

Theoretical and Practical Relevance of the Research. The theoretical relevance of the dissertation research is conditioned by the fact that the author has developed scientific concepts adjusting to scale the doctrinal ideas of the institution of representation in constitutional court proceedings, as well as of its place and role in the mechanism of protection of rights and freedoms of man and citizen currently functioning in Russia. The conclusions reached may be further used in theoretical and

application developments associated with representation in the constitutional procedure.

The practical relevance of the paper is governed by the necessity of improving constitutional and legal regulation of relations created in constitutional justice in carrying out representation activities. The materials received during the research conducted may be also further used for teaching activities in the disciplines of *Russian Constitutional Law*, *Constitutional Procedure in the Russian Federation*, and *Advocacy in Constitutional Court Proceedings*.

Evaluation of the Results of the Research. The paper has been written at the Department of Constitutional and Administrative Law of Nizhny Novgorod Institute of Management, a branch of Russian Presidential Academy of National Economy and Public Administration, used in the teaching-and-learning process of Nizhny Novgorod Institute of Management, a branch of Russian Presidential Academy of National Economy and Public Administration, and presented at five national- and international-level scientific-representational events. The highlights and conclusions resulting from the dissertation research conducted have been reflected in eight scientific publications by the author, including three articles in journals recommended by the Supreme Attestation Commission Attached to the Ministry of Science and Higher Education of the Russian Federation, including two articles in the journal *Bulletin of Volga Institute of Management* recommended by the Academic Council of RANEPA for publication of jurisprudence articles.

Structure of the Dissertation. The paper consists of an introduction, three chapters comprising three, two, and three paragraphs (correspondingly), conclusions and recommendations, as well as a list of cited references and bibliography comprising 359 items.