

Execution of judgments of the European Court of Human Rights

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Abstract: *The article analyses the Resolution of the Constitutional Court of the Russian Federation # 21-P/2015 of July 14, 2015. The authors investigate into problem issues pertaining procedures of execution of the European Court of Human Rights judgments in the Russian Federation. Special attention is paid to the Resolution of the Constitutional Court of the Russian Federation that provides for a possibility of non-compliance with judgments of the European Court of Human Rights, if they are found unconstitutional in Russia. The authors estimate an opinion of the Constitutional Court of Russia concerning this problem from the standpoint of the Russian Constitution and international law. Taking into consideration the systematic analysis of judicial opinions, it is concluded that the Constitutional Court has the right to review constitutionality of non-concluded international agreements only, and to pursue for all available means for approved maintaining of European (conventional) and national (constitutional) law and order; whereas the Russian should, under provisions of international law, willingly enforce international obligations, including the European Court of Human Rights judgments.*

Index Terms: *the European Court of Human Rights (ECHR), the Constitutional Court of the Russian Federation, resolutions of the Constitutional Court of the Russian Federation, the Committee of Ministers of the Council of Europe, judgments of the European Court of Human Rights.*

I. INTRODUCTION

A. Introduction of the Problem

Recently, especially after the adoption of the Resolution # 21-P/2015 of July 14, 2015 by the Constitutional Court of the Russian Federation (hereinafter referred to as the resolution of the RF CC), which determined the procedure for the execution of judgments of the European Court of Human Rights (hereinafter referred to as the ECHR) in the Russian Federation, the current problem represents a paramount importance. In order to pursue the constitutional framework, the Russian Federation may refuse to enforce judgments of the European Court if they contradict the Constitution of the Russian Federation. The failure of a State to fulfill its international obligations, regardless of origin or source, entails the responsibility of the State. International obligations

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may derive from a customary or contractual norm, from a decision of an international organization, an international court or an arbitrage, and from unilateral act of a subject. It means that States endeavour to fulfill their international obligations willingly and freely. To understand the current problem properly, it is necessary to consider what legal consequences are imposed on member states if they fail to execute the ECHR judgments.

B. Importance of the Problem

Problems related to procedures of execution of the ECHR judgments were researched in fundamental works of Khlopov I.E. [1], who investigated the Resolution of the RF CC that provided for a possibility of non-compliance with judgments of the ECHR. The authors identify and examine the reasons that induced the Constitutional Court to adopt the Resolution, the Court's positions from the standpoint of the Constitution of the Russian Federation and international law are also analyzed.

Some issues concerning the execution of judgments of the European Court in the Russian are investigated in articles of Knyazev S.D. [2], who emphasizes the need to recognition of binding provisions in judgments of the ECHR. According to the author, the main difficulties of conventional provisions in their implementation in Russia are not related to the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the Convention), but they refer, mostly, to the interpretation of its norms in the ECHR judgments. S.D. Knyazev notes that derogation from the legal obligation of this Court's judgments is permissible in exceptional cases and can be used only for the purposes of protection of national sovereignty and supremacy of the Constitution of the Russian Federation.

Issues related to the implementation of judgments of the ECHR into national legislation are explored in the works of Schubert T.E. [3] who analyzes the activities of the Government and the Ministry of Justice of the Russian Federation on execution of the ECHR judgments. The author points out the role of the Plenum of the Supreme Court of the Russian Federation in ensuring the uniform application of the Convention for the Protection of Human rights and Fundamental Freedoms as well as the following Protocols ratified by the Russian Federation by courts of common jurisdiction. The researcher proposed measures aimed to eliminate the grounds of delay and incomplete execution of the Court's decisions.

II. METHOD

The methodological

framework for this survey is a set of general scientific and special scientific methods of cognition: descriptive method, deduction, formal and logical (dogmatic), comparative, etc. Their application allowed the authors to analyze the problem and to conduct a legal analysis of resolutions passed by the RF CC in respect to various international legal acts, including the European Convention on Human Rights and judgments of the ECHR, to identify their common and distinctive characteristics.

The combination of these methods has made it possible to determine an obligation of parties to international treaties to comply with any decision of intergovernmental bodies based upon these treaties, even if they contradict national legislation including constitutional requirements. Any state has an obligation to harmonize its national legislation with an

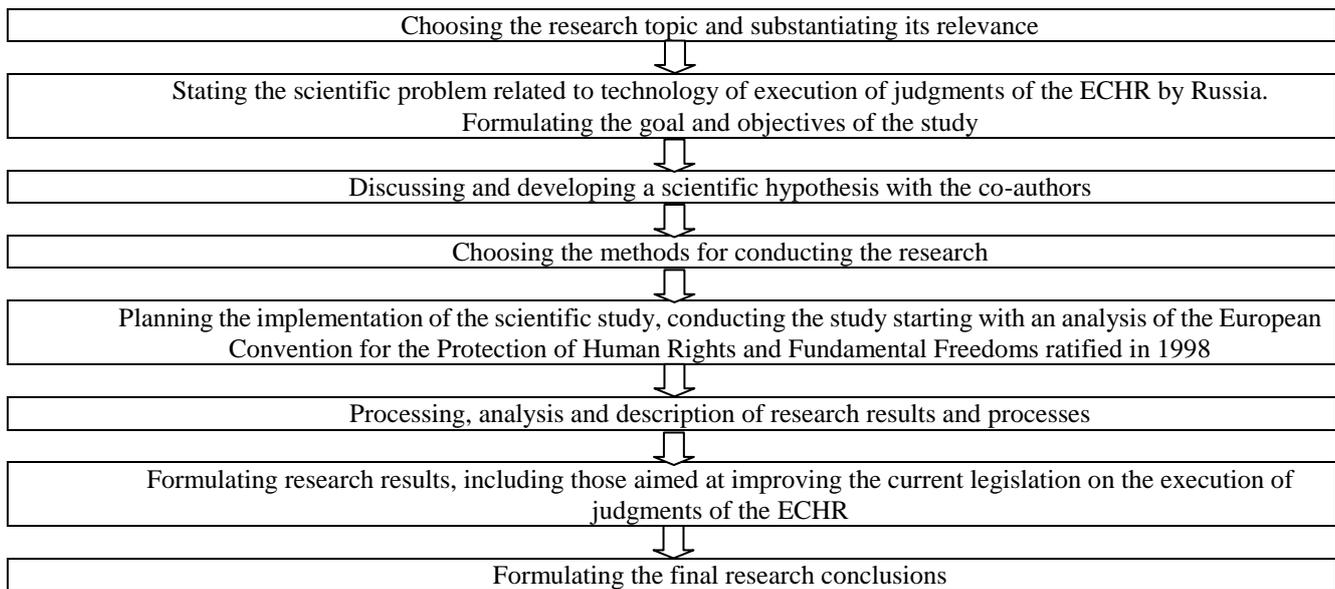
international treaty when ratifying it.

B. Algorithm

The study of the execution of judgments of the ECHR in the Russian Federation was based on a branching algorithm.

In the course of the study, the authors analyzed the norms of international legal acts, materials of the Russian and European judicial practice regarding the enforcement of judgments of the ECHR. The conditions of non-execution of the judgments of the European Court are summarized. The systemic analysis of the legal positions of the court allows to establish the technology of execution of judgments of the European Court of the Russian Federation and to propose ways to improve the legislation.

C. Flow Chart



III. RESULTS

It has been revealed that the Russian Federation has a long history of systemic problems related to the non-compliance to enforce the ECHR judgments. The evidence of this is that in 2018 Russia reached the top position in the list of countries which had an outstanding number of non-executed decisions of the European Court of Justice. One of the grounds for non-execution of ECHR judgments in the Russian Federation was an adoption of the Resolution of the Constitutional Court of the RF # 21-P/2015 of July 14, 2015, which stated that the Russian Federation might not comply with the decisions of the European Court if they found unconstitutional, if they did not respect the supremacy of the Constitution and limited Russia's sovereignty. Moreover, some provisions of the above mentioned resolution of the Constitutional Court of the Russian Federation and the Court's arguments are rather unconvincing and contradictory in terms of the doctrine and practices of international law implementation.

The investigation of the Resolution of the Constitutional Court of the Russian Federation has established that in case of conflicts between the Convention for the Protection of Human Rights and Fundamental Freedoms and the Constitution of the Russian Federation, the ECHR gives an interpretation contradicting the Russian Constitution that makes Russia to

avoid the comprehensive execution of Strasbourg court decisions. This provision makes the non-compliance of not only with the ECHR judgments possible, but also affects, in the same manner, decisions of other international bodies, if they contradict the Constitution of the Russian Federation and violate the principle of its supremacy. The non-compliance with the decisions of international authorities, including judgments of the European Court, may cause the application of international sanctions, which threaten the interests of the Russian Federation in fulfilling its obligations, and may seriously damage the authority of the country.

It is assumed that the main legal consequences for the state are as follows:

- the execution of court decisions (including the timely payment of fair compensation awarded to an applicant);
- the improvement of legislation in accordance with international law.

These considerations are applicable to all individual and national complaints submitted to the ECHR. They also refer to national authorities in terms of adoption a consistent decision, namely, to comply with international obligations adopted (without any reservations and excuses) or to exit the European Convention and jurisdiction



of the ECHR.

In order to improve the legislation, we propose to adopt a normative legal act regulating the execution of judgments of the ECHR on the territory of the Russian Federation. It is also necessary to determine the place of judgments of the European Court in the Russian legal system. The correlation between the legal force of the Constitution and international treaties in the Russian legal system and their place in the hierarchy of sources of Russian national law should be clearly defined.

IV. DISCUSSION

In 1998 the Russian Federation ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (hereinafter referred to as the European Convention), which became an integral part of the legal system of the Russian Federation, that recognized ipso facto the jurisdiction of the ECHR. The Russian Federation undertook to obey its judgments in all cases in which it was a party without a special agreement.

European countries, including the Russian Federation, have voluntarily subordinated themselves to the jurisdiction of a supranational judicial body entitled to make legally binding decisions for member states. The ECHR was established to ensure compliance with the obligations assumed by these participants [4, 5].

The ECHR is an international judicial body which decisions are delivered in respect of a particular state. It is one of the few bodies that have responsibilities to influence changes in national legislations under the provisions of the Convention and its additional protocols adopted by member states, and are intended to ensure strict execution and compliance with the rules of the said Convention. The ECHR judgments are binding and their enforcement is mandatory for all parties. According to Article 27 of the Vienna Convention on the Law of Treaties, the Russian Federation, being in the status of a party, could not invoke the provisions of its national law as an excuse for failing to comply with any international agreement. This article prohibits states from invoking their national law as an excuse to exempting them from the implementation of existing international treaties, and provisions of national constitutions cannot be considered as having a priority in comparison with the Convention, since the supremacy and the ultimate legal power of constitutions apply only in respect to national legal acts. Based on this, the ECHR persistently advocates an opinion that the rules of the Convention cover all acts and measures, regardless of their legal nature, and do not exempt any part of the national legal systems or parties from verification obliged to demonstrate compliance with requirements of the Convention in respect to all its jurisdiction, though often derived from the Constitution (e.g., the ECHR judgment of 30 January, 1998 in the case of *United Communist Party of Turkey v. Turkey*).

The Russian Federation experiences systematic problems relating to the non-execution of ECHR judgments. In 2018 Russia topped the list of countries leading in a number of non-executed decisions of the ECHR [6].

One of the grounds for non-execution of ECHR judgments in the Russian Federation became the adoption of the

Resolution # 21-P from 14.07.2015 by the RF CC. Chapter 2.2 of this document explains that "when the content of any judgment of the ECHR, including those relating to the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms interpreted by the ECHR in the context of a particular case, affects illegitimately the principles and norms of the Constitution of the Russian Federation, Russia may, in exceptional cases, fail to comply with the obligations imposed on it, if such derogation is regarded the only possible way to avoid violation of fundamental principles and norms of the Constitution of the Russian Federation". This provision is reflected in the amendments made to the Federal Constitutional Law "On the Constitutional Court of the Russian Federation".

Chapter 2 of Article 104.4 of this act explains "the impossibility to execute completely and partially, in accordance to the Constitution of Russia, decisions taken by an international body devoted to protect human rights and freedoms adopted on the basis of an international treaty of the Russian Federation by an international body in the form of its own interpretation, that is followed by review of rights litigated at the Constitutional Court of the Russian Federation" [7].

The basis for the RF CC proceeding is deemed a revealed uncertainty in possibility of execution of the decision of the international body that protects human rights and freedoms based on the provisions of the relevant international treaty of the Russian Federation within an interpretation that apparently causes discrepancy with the Constitution of the Russian Federation.

It should be noted that the RF CC consideration on the issue of impossibility to enforce the ECHR judgments contradicts Article 46 of the European Convention. The Court considers that "the highest contracting parties shall comply with final judgments of the court in any case in which they enter into the treaty".

The Resolution of the Plenum of the Supreme Court of the Russian Federation # 5 of October 10, 2003 "On the Application by the Courts of General Jurisdiction the Universally Recognized Principles and Norms of International Law and International Treaties of the Russian Federation" (with amendments and additions), (hereinafter referred to as The Resolution of the Plenum of the Supreme Court # 5) states in Chapter 11 that "judgments delivered definitely in respect to the Russian Federation shall be binding for all public authorities of the country including the courts".

The Constitutional Court of the Russian Federation relies in its resolution on Chapter 1 of Article 46 to the European Convention, but nothing is said about extra obligations which will be imposed by the Court and the Council of Europe, if the Russian Federation as a country-defendant is not really going to execute the final Court decision.

The adoption of Protocol # 14 to the European Convention, which had not been ratified by Russia for a long time, was the best result of experts' work of the Council of Europe on improvement and development of the European Convention



mechanism. It allows the Committee of Ministers of the Council of Europe to raise the problem of interpretation of the Court judgments, while the Committee of Ministers can only threaten the state to expel it from the European Council.

Under the Protocol # 14, when the final decision is delivered, the court shall submit it to the Committee of Ministers to supervise its enforcement. Article 16 of the this Protocol enables the Committee to make appeals to the European Court of Justice and to complain against a member state to the European Convention that refuses to comply with the final judgment of the Court. The purpose of the amendment is to enable the court to determine whether a state has violated its obligations under Chapter 1 of Article 46 to the European Convention or not. If the court finds a violation under this chapter, it shall submit the case to the Committee of Ministers for taking appropriate measures against that state. In accordance with Article 3 of the Charter of the Council of Europe, respect for human rights is regarded as the basic principle underpinning participation in the Council. Article 8 entitles the Committee of Ministers to suspend membership in the Council of Europe or even to expel any member state from the Council, if the latter is found guilty of human rights violations. Non-compliance with the Court's judgments as well as refusal of their enforcement, may be considered by the Committee of Ministers as a violation of human rights by a country-defendant, and imposing of sanctions may follow.

In 2006, the Committee of Ministers adopted "Rules of Supervision over the Implementation of Decisions and Conditions of Friendly Settlements". According to these rules, the Committee was obliged to exercise effective control over undertaken individual and general measures, over fair compensation payments. This provision corresponds to the Resolution of the Plenum of the Supreme Court of the Russian Federation # 5, which states that the implementation of decisions concerning the Russian Federation enables, if necessary, the state to take measures of a private nature aimed at eliminating human rights violations under the European Convention and the following consequences of those violations for a complainant, as well as general measures to prevent the recurrence of such violations. The courts, within their competence, must act in such a way as to ensure compliance with obligations of the state arising from the participation of the Russian Federation in the European Convention for the Protection of Human Rights and Fundamental Freedoms. It means that the implementation of the ECHR judgments should be understood not only as the payment of monetary compensation, but also the elimination of violations of the provisions of the Convention as enshrined in the ECHR judgments. The state is required to adopt measures of an individual nature aimed at eliminating violations and restoring rights, as well as general measures to prevent further violations of the Convention. It is the very necessity of taking measures of general character that makes the Convention a constitutional instrument of the European rule of law on which the democratic stability of the continent depends upon [8].

It should be noted that the ECHR and its judgments do not oblige states to take the above mentioned measures aimed at amending legislative or normative acts, as well as changing the law enforcement practices. If a state does not accept them,

then there is a possibility that such violations will be repeated subsequently and resulted in submission of similar complaints to the ECHR. Russia most often executes the judgments of the European Court which are related to monetary compensation, and also it adopts measures of general character in exceptional cases.

The RF CC emphasizes in its resolutions the priority of constitutional norms before the international ones under the provision enshrined in Chapter 1 of Articles 4 and Chapter 1 of Articles 15 of the Constitution of the Russian Federation. They affirm the supremacy, the highest legal force of the Constitution of Russia. However, it can be assumed that this conclusion is not absolutely convincing. Taking into consideration Chapter 1 of Article 15 of the Constitution of the Russian Federation, it can be noted that it has the highest legal force in comparison to national legal acts, laws and other legal documents of the Russian Federation which should not contradict it. This chapter does not mention that the Constitution has the highest legal force before international treaties.

This problem was raised by I.E. Khlupov in his research, where he pointed out that "if this hierarchy really took place, the RF CC would have been enabled to validate compliance of the existing international treaties with the Constitution of the Russian Federation; however, the drafters of the Constitution had not obliged the RF CC with such a right but only had provided it with the duty to assess the constitutionality of non-concluded international treaties" [1]. This indicates that the constitutional control over prisoners and existing treaties is not entirely lawful. In this part, nothing is said that the Constitution has the highest legal force before international treaties.

The Russian Constitution (Chapter 4 of Article 15) and the Federal Law # 101-FL "On International Treaties of the Russian Federation" of July 15, 1995 (Paragraph 2 of Article 5) determine that "if an international agreement of the Russian Federation establishes other rules than provided for by law, the rules of the international treaty shall apply". This establishes a priority in the application of the norms of international treaties of the Russian Federation in respect to any legal acts contradicting them, i.e. the Constitution. This rule does not answer an important question: Is it binding in respect to all treaties or to their certain types?

The RF CC relies in its resolution to Articles 26 and 31 of the Vienna Convention on the Law of Treaties of 1969, where the first article mentions the principle of *pacta sunt servanda*, which is based on the idea that each treaty is binding for all parties and should be executed in good faith, even if it is contrary to national law, and it is the state that determines which treaty is acceptable to before the state decides to enter that treaty.

The consolidation of such a provision in the resolution of the CC RF casts doubts in requirements to judicial job profiles, alleging that they should be either competent practitioners or recognized legal scholars possessing the highest moral qualities, which correspond to all parameters needed for appointment to high judicial positions. The only body able to give an

expert interpretation of the provisions of the Convention is a law court.

However, it can be assumed that this rationale is not quite correct, since Article 32 of the European Convention envisages that the European Court of Justice is charged with the duty to consider all questions concerning the interpretation and application of provisions of the Convention and its Protocols. Therefore, the ECHR is an ultimate authority that has the right to interpret the Convention and its Protocols. So, this interpretation will be considered the only universally acceptable. According to Paragraph 3 of Article 46 of the European Convention, "if the Committee of Ministers assumes that the supervision over the execution of the final judgment is hindered by the problem of its interpretation, the latter may apply to the Court to deal with this issue". Anyway, the final decision may be interpreted. D.T. Karmanukyan believes that the recognition of the ECHR jurisdiction binding, in terms of interpretation and application of the Convention, is applied to the recognition of the binding force of the European Court judgments, as well as to the recognition and application of norms of the European Convention in the manner and sense they are interpreted in judgments of the European Court of Justice [9].

One of the sensitive aspects in interpretation of the Convention is related to different options for its application. Since the Convention can be applied as part of the Russian Federation's legal system, its provisions can, therefore, be interpreted by Russian courts. But the ECHR is also an interpreting body itself. In this regard, it is possible that the interpretation of the European Convention by Russian courts will differ from those as delivered in the ECHR. It is evident that the interpretation of the Convention by the ECHR will be a priority.

According to Paragraph 3 of the resolution of the RF CC while resolving the constitutional and legal conflicts arising from the interpretation of the Convention for the Protection of Human Rights and Fundamental Freedoms as an international treaty of Russia, there is a need to consider the Vienna Convention on the Law of Treaties to which Russia is a party. In legal collisions between the rules of national law and the rules of international law, we advocate the primacy of international law before the national one. Primacy or priority in application of norms of an international treaty before laws of the Russian Federation is one of the cornerstones of our constitutional system [10].

The principle of favorable attitude to international law has been widely disseminated in international practices. Accordingly, the nonconformity between national and international laws should be resolved in such a way that it can ensure the implementation of international norms and avoid international obligations of the State [11, 12].

It should be emphasized that provisions of the Resolution of the RF CC makes the non-compliance with the ECHR judgments possible in future, and this principle may be also used in respect to decisions of other international bodies, for example, the Human Rights Committee, which is usually acting against unconstitutionality of decisions of these international bodies. In April 19, 2016 the RF CC adopted the resolution which recognized impossible to execute the ECHR judgment in the case of *Anchugov and Gladkov v. The*

Russian Federation in the part of general measures that suggested amendments into the Russian legal system restricting the voting rights of not all convicts serving sentences in penitentiaries, and in the part of measures of individual character in respect to convicts S.B. Anchugov and V.M. Gladkov.

International judicial decisions are binding as soon as they are granted, as they are final in nature. This provision is enshrined in many international instruments such as the Charter of the United Nations, the Statute of the International Court of Justice (Article 59), the Statute of the International Tribunal for the Law of the Sea (Article 33). Besides, according to Paragraph 1 of Article 94 of the UN Charter, each member state takes an obligation to comply with the judgment of the International Court of Justice in the case in which it is a party. Respectively, it is the duty of every member state of the UN to enforce decisions delivered by the international judicial body, which should be executed in good faith and without any delay.

It is important to assume that failure to comply with the ECHR judgments may cause the following:

- firstly, the non-compliance with decisions of international bodies, including the ECHR, jeopardizes interests of the Russian Federation, that leads to international sanctions aimed to enable the state to fulfill its obligations, and this seriously damages the country's credibility;

- secondly, the abuse and recognition of impossibility to execute the ECHR judgments are increased in current situation;

- thirdly, this situation leads inevitably to systemic violations of rights and freedoms of citizens that prevents their protection [13, 14].

The ECHR judgments are binding for the Russian Federation and act as a factor for legislation improvement and harmonization with provisions of the European Convention. It is appropriate to cite an opinion of I.S. Metlova, who has concluded that the ECHR, while applying and interpreting the Convention on a particular case, creates normative settings in the form of its judicial opinions [15]. This circumstance gives reason to consider the judgments of the ECHR as a source of law. The most justified is the position of those scientists who advocate the ECHR decisions to be sources of law [16, 17]. For example, D.V. Zverev points out that the Russian legal system has incorporated a new source of law – precedents of the ECHR [18].

V. CONCLUSION

With the above discussion, it is evident, that the execution of judgments of the ECHR is mandatory for the Russian Federation. This is so that Russia is entrusted with the obligation to bring national legislation and law enforcement practices in line with the provisions of the European Convention and its additional Protocols. Hence, the ECHR is the most important and the only regional supranational judicial organ. The decisions of this judicial authority should serve as a guideline for Russian legislators in their law-making process to eliminate gaps, conflicts and other problems arising in



national legislation. The courts of all member states to the European Convention should examine and rely on Court decisions in order to apply the provisions of the Convention correctly. The judgments of the ECHR have a direct effect. This impact of direct action in national legislations of member states is unique as features the mechanism of the Convention application. The judicial power of a member state immediately incorporates the requirements of the Convention into the national law without waiting for other branches of government to do so.

That is why the non-compliance by all member states with the provisions of the Convention interpreted by the ECHR, warrants the recognition of the state concerned as a violator of international obligations. Recognizing judgments of the European Court legally binding, the parties are obliged to take into account the decisions of the European Court in conventional interpretation every time when applying the provisions of the said Convention.

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