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International Law and Decisions of the European Court of Human Rights in the Eyes of the Russian Legislator and Law Enforcer

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Taking into account the history of reception of foreign and international law by the Russian legislation and the changed historical and political conditions, the article considers the following questions: compliance of the Russian Constitution provisions with the European Convention on the Protection of Human Rights and Fundamental Freedoms; practice of enforcement of the European Court decisions by the Russian legislator and law enforcer. It is stated that the ECtHR decisions influence not only the decisions in particular cases but the acts of interpretation by the RF Supreme Court Plenum. The article analyses different decisions of the RF Constitutional Court, which declared some decisions of the ECtHR inconsistent with the RF Constitution. Consequently, considering the analysis made and some decisions of Constitutional Courts of some European countries, it is possible to conclude that the provisions of the RF Federal Law "On the Constitutional Court" and the practice of the RF Constitutional Court concerning the enforcement of the ECHR decisions complies with the European practice.

Keywords: influence of foreign law provisions, rules of international law, the European Court of Human Rights, the Constitution of the Russian Federation, the Constitutional Court of the Russian Federation, Rulings of the Plenum of the RF Supreme Court, fundamental human rights and freedoms, tortures, instigation of a crime, decisions of the Supreme Court of the Russian Federation, enforcement of the ECHR decisions.

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Research area: law.

Introduction

The influence of foreign legislation and law enforcement practice on Russian law (including criminal law) and law enforcement activity has a long history. Back in the early 18th century, in the Age of Peter the Great and the development of

the Articles of Law, the Russian law was majorly influenced by Swedish legislation.

The intensive development of international legislation (besides bilateral and multilateral treaties that have always existed) after the World War I.

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The Soviet state, which in the first years was not recognized by many states of the world¹, did not strive to adopt any international law regulations into its legislation. Even though the Soviet Union signed multiple international conventions against certain kinds of crime, its domestic regulations did not always conform to international acts.

Thus, even though the USSR recognized the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of December 10, 1984, on January 21, 1987, the term of “torture” and its definition was not included into the Criminal Code of the RSFSR even after 1987. This term appeared in the legislation only in the year 1996, when the Criminal Code of the Russian Federation² was enacted (par. “d” Part 2 Article 117, Article 302). But the criminal law still lacked the definition for the term. It was only introduced as late as on December 8, 2003. However, the provided definition did not comply with the that of the mentioned Convention. It denotes torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”.

Unlike the Convention, the remark to Article 117 RF CC does not foresee involvement of any public officials or persons acting in an official capacity. Such definition does not only contradict the one provided by the Convention, but also makes Part 1 Article 117 RF CC meaningless, since the acts it describes are completely covered

by the definition of torture provided in the remark to the article.

Only in the late 20th century the Russian Federation significantly activated the process of execution of international obligations at the domestic level, including introduction of international legal regulations into its national legal system.

Theoretical framework

Currently the issue of comparative culturological research of the international legislation, judgments of the ECtHR and the domestic legislation of Russia is becoming more and more acute.

The European Convention on the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the Convention) was recognized by the Federal Law of the Russian Federation No. 54-FZ of March 30, 1998. Russia joined the Convention only when the guarantees of rights and personal freedoms constituting its own constitutional regulation enabled it to comply with the Convention provisions.

For this reason the provisions of the first section of the Convention did not require any corrections of the Russian legislation, since the rights and freedoms foreseen by it were also included in Chapter 2 of the Constitution of the Russian Federation (hereinafter referred to as the RF Constitution) enacted on December 12, 1993. **Article 17 of the RF Constitution states that “in the Russian Federation recognition and guarantees shall be provided for the rights and freedoms of man and citizen according to the universally recognized principles and norms of international law and according to the present Constitution”.**

The Convention was executed in English and French languages. Due to the linguistic specificity, the two texts can be only approximately identical.

According to N.V. Gogol, "... each and every nation, endowed with its own strength and creative abilities, its own vivid individuality and other gifts of god, sets itself apart from every other nation by its own special word, a word which, no matter what object it describes, also reflects a facet of that nation's own character. The word of the Briton will resound with worldly wisdom and knowledge of the human heart; the ephemeral word of the Frenchman will flash for a brief moment of brilliance like a frivolous dandy and then vanish in the wind; with deliberation the German will fashion his portentous but skeletal word, not understandable to all; but there is no word so pert and quick, which bursts from the heart with such spontaneity, which seethes and bubbles with such vitality, as the aptly spoken Russian word"³.

Let us compare some provisions of the regulatory acts mentioned above.

The Convention (Article 3) and the RF Constitution (Article 21) forbid the use of tortures, intimidating, inhumane (Convention) and cruel (Constitution) treatment or punishment. Both of them include such evaluative expressions as "intimidating", "inhumane", and "cruel", opening a number of opportunities for wide and ambiguous interpretation of the formulation. However, the Russian regulation includes a remark that no one can be exposed to any medical, scientific or another experiment without his or her voluntary consent.

Article 4 of the Convention forbids slavery, forced or compulsory labour, while Article 37 of the RF Constitution speaks of compulsory labour. Neither of the acts provide the definitions of the used terms, but, to the advantage of the Constitution, it lists what the "forced and compulsory labour" does not include.

In its turn, another advantage of Article 37 of the RF Constitution is the fact that it does not only forbid any forced labour, but also declares the

right of people to free labour in safe conditions, as well as their right to rest.

Concerning the right to fair trial and efficient legal remedies, the Convention and the RF Constitution coincide. The Convention speaks of such rights in Articles 6 and 13, while the RF Constitution devotes Articles 45-51 to the issue, providing more details and restricting any judicial outrage in its interpretation.

The right to respect for private and family life is declared in Article 8 of the Convention. However, other provisions of the regulation appear evaluative. For instance, the definition of respect is not clear. In Russian language, this term has several meanings. According to the Russian language dictionary, "respect stands for deference to somebody based on recognition of their accomplishments. To respects means 1) to treat someone or something with respect; 2) to honour someone or something, to consider them and follow the interests of someone or something; 3) to love, to show compassion to someone or something"⁴. The polysemy of the word may be the basic reason for Russian legislators not to use it in legal texts, for their subject matter is the privacy of one's life, personal or family secret, protection (not respect) of one's honour and reputation, secret of personal correspondence (Article 23 of the RF Constitution), inviolability of residence (Article 25 of the RF Constitution).

From our point of view, Articles 9 of the Convention and Article 29 of the RF Constitution are not perfect either. The mentioned Article of the Convention speaks of freedom of thought, conscience and religion, while in Russian law the freedom of conscience and religion are foreseen by Article 28, and freedom of thought by Article 29.

Conscience means a sense of ethic responsibility for one's behaviour to other people and the society⁵.

Basically, Article 9 of the Convention and Article 28 of the RF Constitution only speak of the freedom of belief (religion). Mentioning the freedom of consciousness (at least in the Russian text) is excessive.

Even brief comparison of some provisions of the Convention and the RF Constitution reveals similarity in their declaration of the fundamental freedoms and rights. For this reason the judgments of the European Court of Human Rights based on the said Convention may be implemented (executed) in the territory of the Russian Federation.

Statement of the problem

In accordance with Part 1 Article 46 of the Convention, “The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties”. In accordance with this article, the Russian Federation *ips facto* and without a special agreement recognizes the jurisdiction of the European Court of Human Rights as binding in the issues of interpretation and implementation of the Convention and Protocols to it in case of possible infringement of their provisions by the Russian Federation, if such infringement takes place after their enactment towards the Russian Federation.

We could not find any reliable statistic data concerning the implementation of the ECtHR judgments in the territory of Russia. But based on the analysis of over one hundred of the ECtHR judgments, it appears right to suggest that the majority of judgments on fair compensation, remarking that the best compensation would be the review of the case under which the violation of the Convention was revealed, are being enforced. It is guaranteed by Article 413 of the Russian Federation Court of Criminal Procedure, which foresees the annulment of the enacted judgments, resolutions and verdicts

of the court due to new or newly discovered circumstances including the violation of the Convention on Human Rights revealed by the ECtHR or violation of the fundamental freedoms revealed during the criminal trial carried out by the Court of the Russian Federation.

For many years we could observe certain succession between the judgments of the ECtHR and the resolutions of the Supreme Court of the Russian Federation in certain cases, as well as in the interpretation of certain types of cases by judicial bodies.

This statement can be well illustrated with the criminal cases with the proven fact of entrapment (such as bribery and drug trafficking cases). The analysis of the ECtHR judgments demonstrates that in the majority of cases concerning drug trafficking the problems occur at the research of the proofs obtained in the process of sting operation.

ECtHR judgment of December 15, 2005 with regard to *Vanyan v. Russia* (application No. 53203/99) states that “Where the activity of undercover agents appears to have instigated the offence and there is nothing to suggest that it would have been committed without their intervention, it goes beyond that of an undercover agent and may be described as incitement. Such intervention and its use in criminal proceedings may result in the fairness of the trial being irremediably undermines (see *Teixeira de Castro*, cited above, pp. 1463-1464, par. 38-39)”. The same document remarks, that “The public interest in the fight against drug trafficking cannot justify the use of evidence obtained as a result of police incitement. Where the activity of undercover agents appears to have instigated the offence and there is nothing to suggest that it would have been committed without their intervention, it goes beyond that of an undercover agent and may be described as incitement”⁶.

Considering the mentioned and other judgments of the ECtHR, the judicial board of the Supreme Court of the Russian Federation issued its judgment with regard to case 9-008-4 of M., acquitting him. With the letter of the Assistant General Prosecutor of the Russian Federation No. 15/2-667-08 of 01.04.2008, the judgment was distributed between the prosecutors of the entities of the Russian Federation.

Analyzing the case, Professors Komissarov V.S. and Iani P.S. conclude: “Therefore, for the reason of the ECtHR judgments considered by the supreme judicial body of Russia, the incitement and instigation activity of the law enforcement officers shall be regarded as a new circumstance not yet included into Chapter 8 of the RF CC, thereby denying the criminal character of the deed committed by the person in regard of whom such instigation activity occurred”⁷.

The ECtHR has issued similar judgments multiple times. Thus, the judgment on *Bannikova v. Russia* of November 4, 2010, states that “In the specific context of investigative techniques used to combat drug trafficking and corruption, the Court’s longstanding view has been that the public interest cannot justify the use of evidence obtained as a result of police incitement, as to do so would expose the accused to the risk of being definitely deprived of a fair trial from the outset (see, among other authorities, *Teixeira de Castro v. Portugal*, 9 June 1998, §§ 35-36 and 39, *Reports of Judgments and Decisions* 1998-IV; *Khudobin v. Russia*, no. 59696/00, § 135, ECHR 2006-XII; *Vanyan v. Russia*, no. 53203/99, §§ 46 and 47”⁸.

Following this line, the courts of the Russian Federation either terminate the cases (judgment of the Supreme Court of the Russian Federation No. 11-Д13-33 of October 29, 2013, in regard to case of M. under Part 3 Article 204 of the RF CC⁹; judgment of the Supreme Court of the Russian Federation No. 50-О12-10 of April 17, 2012, in regard to Kudryavtsev case under Part

1 Article 292, Part 3 Article 290 of the RF CC¹⁰) or issue judgments of acquittal (judgment of the Supreme Court of Tatarstan in regard to case of G. under Part 4 Article 290 of the Criminal Code – Cassational Ruling of the Supreme Court of the Russian Federation No. 11-О12-1 of January 31, 2012¹¹; Cassational Ruling of the Supreme Court of the Russian Federation No. 9-О08-4 of February 21, 2008, in regard to case of M. under Part 3 Article 30, par. “d” Part 4 Article 290 of the Criminal Code¹²) if the fact of incitement is established.

Summing up the common judicial practice, taking the practice of the ECtHR into consideration, the Plenum of the Supreme Court of the Russian Federation in par. 33 of its judgment No. 24 of July 9, 2013 “On Judicial Practice in the Cases of Bribery and Other Corruption Crimes” stated that “Due to the fact that the incitement of bribery occurs without prior warning, or intentionally forcing the public official to take the bribe, the said persons are not subject to criminal liability for bribery for the absence of a criminal act (Par. 1 Part 1 Article 24 of the Code of Criminal Procedure of the Russian Federation)”¹³.

The existing research also remarks that the basis for the modification of Article 5 of the Federal Law No. 144-FZ of August 12, 1995 “On Investigative Activities”, according to which the law enforcement bodies are not entitled to incite any wrongful acts of the citizens, were the judgments of the ECtHR on certain cases¹⁴.

It is also worth noticing that the practices of Russian supreme judicial body concerning implementation of the European Court judgments can be sometimes controversial.

Thus, the Judicial Chamber on Criminal Cases of the Supreme Court of the Russian Federation, referring to the ECtHR judgment of September 25, 2008, recognizing the violation of the right of the accused to defence from a new accusation by the replacement of the initial

bribery accusation with fraud during the trial, resolved to annul the verdict and sent the case for a new judicial examination at the pre-trial stage¹⁵.

It has been less than a year, when the Presidium of the Supreme Court of the Russian Federation in the case of N. convicted under Part 3 Article 30, Part Article 159, Part 1 Article 222 of the RF CC, issued an opposite resolution that “The fact of changing the accusation from bribery to fraud by the prosecution during the trial does not infringe the right to defence of the accused”¹⁶.

Despite the mentioned judicial resolutions, everything said above brings us to the conclusion that until recent time the judgments of the ECtHR in Russia have been majorly executed.

At the same time, we cannot but notice that some authors claim almost all ECtHR judgments to be usually ignored by Russia.

“The judgments issued by the European Court of Human Rights are binding for Russia according to Article 46 of the European Convention and Article 15 of the Constitution. As for practice, Russia does not execute quite a big number of the ECtHR judgments including the ones claiming the necessity for taking general measures and non-legislative measures concerning, for instance, some efficient investigation of the crimes committed in the North Caucasus”¹⁷. By the end of 2015, 1067 of judgments against Russia were under “enhanced control” of the Committee of Ministers of the Council of Europe (body responsible for the enforcement of the ECtHR judgments), while 451 were under “standard control”. It means that all in all Russia has not enforced 1529 judgments issued by Strasbourg¹⁸.

The head of the human rights group AGORA P. Chikov clarified that the denial of such enforcement generally concerns the so-called “general requirements” calling for the

systematic resolution of regular infringement of human rights¹⁹.

Some judgments issued by the ECtHR in the recent years caused some negative reaction of the legislative, executive and judicial systems of Russia.

“In the judicial environment we hear some justified arguments claiming that random enforcement of the conventional regulations of the European Law based on the European interpretation of the universal ideas of rights, freedoms and other legal categories, can never replace the national legal specificity of this or that state”²⁰.

Professor V. Blazhev believes, that “the practice of implementing the conventional legal regulations without regard to the national specificity of the domestic law inevitably leads to a conflict with the domestic legal system”²¹.

Professor P. Krashennikov suggests that Russia enforces the judgments issued by the ECtHR and other international courts provided that such courts include some representatives of Russia. In all other cases, the sovereign Russian law shall prevail²².

On July 4, 2013, the ECtHR issued its judgment with regard to *Anchugov and Gladkov v. Russia* case, stating that the defendant state exceeded its limits of competence and failed to ensure the applicants’ right to vote guaranteed by Article 3 Protocol No. 1 to the Convention²³.

Anchugov and Gladkov based their arguments on the previous similar judgment of the ECtHR against Great Britain with regard to *Hirst v. Britain*, when Strasbourg also recognized infringement of human rights.

Then, examining the Hirst case, the European Court analyzed the practice of other countries. It was found that voting rights of prisoners in such countries as Albania, Azerbaijan, Croatia, Cyprus, the Czech Republic, Denmark, Finland, Ireland, Latvia, Lithuania, Moldavia, Montenegro,

Serbia, Slovenia, Spain, Sweden, Switzerland, Macedonia and Ukraine were not restricted. In such countries as Austria, Belgium, Bosnia and Herzegovina, France, Germany, Greece, Italy, Luxembourg, Malta, Monaco, the Netherlands, Poland, Portugal, Romania, San Marino, Slovakia and Turkey the right to vote depends on the gravity of punishment and term of deprivation. Voting is absolutely restricted for prisoners in Armenia, Bulgaria, Estonia, Georgia, Hungary, Russia and Britain²⁴.

Judgment of the Constitutional Court of the Russian Federation (hereinafter referred to as the RF CCourt) No. 12-П of April 19, 2016 “on the possibility of execution of the Judgment of the European Court of Human Rights of July 4, 2013 with regard to *Anchugov and Gladkov v. Russia* under the inquiry of the Ministry of Justice of the Russian Federation”, according to Parts 3 (Parts 1-3), 15 (Parts 1 and 4), 32 (Parts 1 and 2), 46 (Part 3) and 79 of the Constitution of the Russian Federation, recognized the execution of the Judgment issued by the ECtHR on July 4, 2013 with regard to *Anchugov and Gladkov v. Russia* (appl. No. 11157/04 and No. 15162/05), based on Article 3 “Right to Free Elections” of Protocol No. 1 to the Convention on the Protection Human Rights and Fundamental Freedoms in the interpretation of the ECtHR, to be impossible concerning the general measures suggesting the modification of the Russian legislation (and, therefore, of the judicial practice based on it) to restrict the voting rights of some prisoners serving their sentence at some detention facilities under the verdict, as the instruction of Article 32 (Part 3) of the RF Constitution, prevailing and exercising the supreme legal power in Russian judicial system, definitely means mandatory interdiction, according to which all the convicted serving their service at detention facilities under the criminal law have no voting rights, without any deprivation.

The execution of the ECtHR judgment with regard to *Anchugov and Gladkov v. Russia* concerning the individual measures foreseen by the current legislation of the Russian Federation in respect to S.B. Anchugov, and V.M. Gladkov, was also recognized impossible, for the said persons had been convicted for long deprivation for the gravest crimes, which means that they could not count for any access to voting even according to the ECtHR criteria²⁵.

Modification of the Russian legislation under the ECtHR judgment and provision of the voting right to the convicted would have been a radical step, since the subject matter is approximately 526 thousand potential voters all around the country (data provided by the FS for Punishment Execution as of January 1, 2016). All in all, there are around 111 million voters in Russia. The convicted would constitute less than 0.5 per cent of the total amount of people able to vote. However, concerning the low election turnout, they could have played a significant role at the elections. As practice showed, the prisoners of the investigation cells who can still exercise their voting right in Russia, showing quite a high election turnout, normally prefer to vote for the opposition parties²⁶.

In its reply to the inquiry of the RF CCourt concerning the ECtHR Judgment, Saint Petersburg State University remarked that due to the large number of the convicted in Russia (according to the University, approximately 660 thousand people in 2015), giving the vote to the convicted would “threaten the decisions made by the authorities by the impact made by the criminal world”.

The authors of the research suggested that if the convicted are allowed to vote, Russia would be later accused of failing to ensure free decision-making and freedom of will, which is hard to provide at the detention facilities. In its turn, it will cause the accusation of the Russian Federation

elections of not being fair or democratic. “It makes the impression that the persistence of the ECtHR concerning this categorical requirement to the Russian Federation is intended to challenge the freedom and fairness of the future Russian elections”²⁷.

On December 14, 2015 the President of the RF signed the law enabling the CCourt of the RF to solve the problem of full or partial execution of the ECtHR judgment (par. 3.2 Part 1 Article 3, Part 3 Article 36, Part 1 Article 47.1, Chapter X111.1 of the Federal Constitution Law No.1-FKZ of July 21, 1994 (edition of December 14, 2015) “On the Constitutional Court of the Russian Federation”). The decision was caused by the cases when the judgment of the European Court mismatched the RF Constitution. Should the Constitutional Court of the Russian Federation issue a judgment foreseen by paragraph 2 Part one of the present Article, any actions (acts) intended for the judgment of the corresponding international body of human rights in the Russian Federation shall not be carried out (enacted) (Article 104.4. Federal Constitutional Law of the Russian Federation “On the Constitutional Court of the Russian Federation”).

Concerning the execution of its judgments, the ECtHR itself supposes that some certain means for the execution of the statutory obligation assigned to the defendant state within the national legal system as per Article 46 of the Convention on the Protection of Human Rights and Fundamental Freedoms shall be selected, according to general rule, by the defendant state itself, provided that such means are compatible with the conclusions of the corresponding judgment of the European Court on Human Rights; however, the issues of interpretation and execution of the national legislation shall be resolved by the national authority bodies, and judicial bodies in particular; such opportunity of acting at the state’s own discretion concerning the

means of implementation of the European Court judgments reflects the freedom of choice provided by Article 1 of the European Convention on the Protection of Human Rights and Fundamental Freedoms as the underlying obligation of the member states to ensure the rights and freedoms provided by the convention (Judgments on the case *Scozzari and Giunta v. Italy* of July 13, 2000; *Jahn et al. v. Germany* of June 30, 2005; *Scordino v. Italy* of March 29, 2006; *Musaeva v. Russia* of July 3, 2008; *Ruslan Umarov v. Russia* of July 3, 2008 etc.).

We do not deny a situation when, joined by the Russian Federation, an international treaty complied with the RF Constitution both in its literal meaning and the meaning assigned to it in the process of its enforcement by an international judicial body. But with later interpretation it could get conceptually specified (with the high grade of abstraction of the norms specific to the Convention) in such a way that it came to contradict both the RF Constitution and the foundations of the constitutional system, including the national sovereignty and precedence of the RF Constitution.

Since the consent of the Russian Federation to a binding international treaty contradicting this or that provision of the RF Constitution may be revealed only after the resolution of the authorized international body based on the interpretation of a certain international treaty in the way that makes it contradict the provision of the RF Constitution is made, the subject matter is not the general validity or invalidity of an international treaty for the Russian Federation, but the impossibility of its implementation in the interpretation of the authorized international body within the framework of a certain case.

In the context of the Vienna Convention on the Law Treaties of May 23, 1969, it means that a judgment of the ECtHR cannot be enacted by the Russian Federation in the part of the

individual and general measures laid upon it, if the interpretation of the international treaty underlying such judgment contradicts the corresponding provisions of the RF Constitution.

Derogation from the ECtHR judgments, interpreting and implementing the Convention, also takes place in the practice of some European states, though it happens in some exclusive cases in the presence of significant reasons, such as the discovery of collisions between the convention and the constitution, concerning, as a rule, not the core (gist) of these or those human rights or freedom as such (formulated in the Convention in the most abstract way), but their specification through their interpretation by the ECtHR judgments.

Discussion

In this regard the most indicative is the practice of the Federal Constitutional Court of the Federal Republic of Germany relying on the legal position developed in its judgments of October 11, 1985, October 14, 2004 and July 13, 2010, concerning the “restricted legal power of the ECtHR judgments”. Particularly, solving the problem of execution of the ECtHR judgment with regard to *Gorgulu v. Germany* of February 26, 2004, it formulated the principle of the constitution’s precedence to the European Court judgments for national law enforcement: in the domestic system of justice, the Convention on Human Rights has the federal law status and along with the ECtHR practice acts as a guide for interpretation of the content and scope of the fundamental rights and principles of the FRG fundamental law only provided that it does not restrict or derogate the fundamental rights of the citizens protected by the FRG fundamental law; the ECtHR judgments are not always binding for the FRG courts, but they should not be completely ignored; the national justice should properly consider the judgments and cautiously adapt

them to the domestic legislation. Along with that, the Federal Constitutional Court of the Federal Republic of Germany suggests that the means of achieving consensus with the European Court on Human Rights is avoidance of conflicts between the domestic and international law at the initial stage of case examination at the national court, which should be basically minimized, since both courts apply similar methodology (judgment on the case 2BvR 1481/04 (BVerfGE 111, 307) of October 14, 2004). A similar position was expressed earlier concerning the judgments of the European Court of Justice (judgment on the case 2 BvL 52/71 (BVerfGE 37, 271) [“Solange-I”] of May 29, 1974).

A similar approach was used by the Constitutional Court of the Italian Republic (judgment on the case *Maggio et al. v. Italy* of May 31, 2011). The precedence of the constitutional regulations is also established in the judgment of the Constitutional Court of the Italian Republic No. 238/2014 of October 22, 2014, in connection with the judgment of the International Court of Justice on Jurisdictional Immunities of the State (Jurisdictional Immunities of the State (Germany v. Italy: Greece Intervening), Judgment, I.C.J. Reports 2012): in case of a conflict with the fundamental constitutional principles of the Italian law, an international judicial body judgment makes it impossible to interpret it in the context of Article 10 of the Constitution of the Italian Republic, which normally foresees automatic acceptance of international law into the national system.

In its judgment of October 16, 2013 ([2013] UKSC 63) the Supreme Court of the United Kingdom of Great Britain and Northern Ireland remarked the unacceptability of the conclusions and interpretation of the Convention on Human Rights in the judgment of the European Court on Human Right in the case of *Hirst v. the United Kingdom* (N 2) of October 6, 2005, for Great

Britain concerning the problem of the prisoners' right to vote. According to its legal position, the judgments of the European Court on Human Rights cannot be taken as unconditionally binding; the implementation of its judgment is only possible provided that they do not contradict the underlying material and procedural regulations of the national law.

In all the mentioned examples of collisions between the Convention and the constitutions, the subject matter is not a contradiction of the Convention as such to the national constitutions; it is the collision of interpretation of the convention provision by the ECtHR in its judgment on a certain case, and the provisions of the national constitutions including their interpretations by constitutional courts.

The issues concerning the European human rights protection system and the role of the European Court on Human Rights as its supervising body are being actively discussed at the highest international level (in Interlaken in 2010, in Izmir in 2011 and in Brighton in 2012). The participants of such discussions come up with mutually exclusive opinions, from unacceptability of any infringement of the concept and letter of the European Convention on the Protection of Human Rights and Fundamental Freedoms and the authority of the ECtHR, to radical criticism of these institutions as obsolete bodies which, by this time, have lost its legal and social validity.

Conclusion

Execution of the judgments of the European Court on Human Rights is an endemic problem, indissolubly related to the questions of correlation between the national and supranational

(international) law, the problem of review of the judgments issued by the Constitutional Court of Russia due to the ECtHR judgments if they contradict each other. In this regard the Chairman of the Constitutional Court of Russia expressed his definitive opinion that the sovereignty of the Russian state is infringed if the primary judgment the constitutional control court of Russia is modified after the Strasbourg judgment. This reaction was caused by the explosive judgment of the ECtHR on *Konstantin Markin v. Russia* case. In his article "Limits of Compliance", V.D. Zor'kin claims that "it is the first time when the European Court challenges the judgment of the Constitutional Court of the Russian Federation in such a "tough legal form"²⁸.

Article 27 of Vienna Convention on the Law of Treaties states, that "a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty". Moreover, Article 46 of the same Convention states that "a state may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance".

But the Constitution of the Russian Federation has precedence in the territory of the Russian Federation, so any international treaties of Russia as well as the ECtHR judgments shall follow this law.

The judgments of the constitutional courts of some European countries show that the RF Constitutional Court's response to the issue of execution of the ECtHR judgments generally coincides with the European practice.

¹ The first state to recognize the USSR was Lithuania in 1920; Afghanistan, Germany, Iran, Mongolia, Poland, Turkey, Finland in 1923; Spain, the USA in 1933; Yugoslavia in 1940.

² Hereinafter referred to as the RF CC.

³ Gogol, N.V. (2012). *Mertvyye dushi [Dead Souls]*. Saint Petersburg, Azbuka, p. 157-158.

- ⁴ Ozhegov, S.I. (1986). *Slovar' russkogo iazyka [Russian language dictionary]*. Moscow, Russkiy Iazyk, p. 713.
- ⁵ Ibid, p. 644.
- ⁶ *Biulleten' ESPCH. Rossiyskoe izdanie [ECtHR Bulletin. Russian edition]* (2006). (7), p. 57, 102-116.
- ⁷ Komissarov, V.S., Iani, P.S. (2010). *Provokatsionno-podstrekatel'skaia deiatel'nost' v otnoshenii dolzhnostnogo litsa kak obstoiatel'stvo, iskluchaiuschee otvetstvennost' za poluchenie vziatki. Stat'i po predmetu Ugolovnoe pravo [Incitement and Instigation Activity in Respect with a Public Official as a Circumstance Excluding Liability for Bribery. Articles on Criminal Law]*. Available at: <http://www.justicemaker.ru/view-article.php?id=21&art=1478>
- ⁸ *Rossiyskaia khronika Evropeyskogo suda [Russian Chronicles of the European Court]*. (2011). 4.
- ⁹ *Zakonnost' [Justice]*. (2015). 6, p. 28.
- ¹⁰ Ibid, p. 30.
- ¹¹ Ibid, p. 29.
- ¹² Ibid.
- ¹³ *Biulleten' Verkhovnogo Suda RF [Bulletin of the Supreme Court of the Russian Federation]*. (2013). 9, p. 9.
- ¹⁴ Maslov, V. (2011). Postanovleniia Evropeyskogo suda po pravam cheloveka v praktike rassmotreniia ugovolnykh del [Judgments of the European Court of Human Rights in the Criminal Case Examination Practice], *In Zakonnost' [Justice]*, 6, p. 9.
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**Международное законодательство
и постановления Европейского суда
по правам человека глазами
российского законодателя
и правоприменителя**

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ул. Комсомольская, 21*

С учетом истории рецепции норм зарубежного и международного права в российское законодательство, изменившихся исторических и политических условий рассмотрены вопросы: соответствия положений Конституции Российской Федерации положениям Европейской конвенции о защите прав человека и основных свобод; практика исполнения постановлений Европейского суда по правам человека российскими законодателем и правоприменителем. Констатируется влияние решений ЕСПЧ не только на решения судов по конкретным делам, но и на акты толкования, даваемые Пленумом Верховного суда РФ. Проанализированы отдельные решения Конституционного суда Российской Федерации, признавшие не соответствующими Конституции Российской Федерации конкретные решения ЕСПЧ. С учетом всего проведенного анализа и решений конституционных судов некоторых европейских стран следует прийти к выводу, что положения Федерального закона РФ «О Конституционном суде» и практика Конституционного суда РФ по вопросу исполнимости решений ЕСПЧ соответствуют европейской практике.

Ключевые слова: влияние положений норм зарубежного права, нормы международного права, Европейский суд по правам человека, Конституция Российской Федерации, Конституционный суд Российской Федерации, постановления Пленума Верховного суда РФ, основные права и свободы человека, пытки, провокация преступления, решения Верховного суда Российской Федерации, исполнение решений ЕСПЧ.

Научная специальность: 12.00.00 – юридические науки.
