

Impact of the Judgments of the European Court of Human Rights on the Implementation of Constitutional Guarantees of Human Rights

Victoria V. Filatova

PhD in Jurisprudence, Associate Professor Faculty of Law named after M. M. Speransky of the Institute of Law and National Security of the Russian Presidential Academy of National Economy and Public Administration (RANEPA), Department of International and Integration Law, Saint Petersburg, Russian Federation; victoria-vf@mail.ru

ABSTRACT

The article is devoted to the implementation of the constitutional right of citizens of the Russian Federation to appeal to interstate bodies for the protection of human rights. The implementation of this right is considered on the example of the European Court of human rights and its rulings. The author gives an assessment of the changes in the Russian legislation made on the basis of European Court rulings, as well as the difficulties faced by the state when reforming its legal system.

Keywords: The Constitution of the Russian Federation, the European Court of human rights, changes in the legislation of the Russian Federation, the constitutional right to protection in interstate bodies, ECHR resolutions

2018 marks the 25th anniversary of the Constitution of the Russian Federation. This is the period allowing assessment of the practical implementation of many constitutional norms and making some forecasts for the future. The Russian Federation is currently heading for changes. On January 20, 2020 the President of the Russian Federation sent Draft Law No. 885214-7 to the State Duma of the Russian Federation: Law of the Russian Federation on Amendments to the Constitution of the Russian Federation "On Improving the Regulation of Certain Issues of Organization of Public Authority"¹ which, along with other significant changes, provides for a new wording of Art. 79 of the Constitution of the RF². If the amendments are adopted, this article will be supplemented with the following provision: "The decisions of interstate bodies adopted on the basis of the provisions of international treaties of the Russian Federation in their interpretation inconsistent with the Constitution of the Russian Federation shall not be executed in the Russian Federation"³, which may entail changes both in the interpretation of the constitutional norms and in their practical application. Such changes may lead to an increasing number of judgments of the European Court of Human Rights recognized by the Constitutional Court of the Russian Federation as unenforceable. The Constitutional Court of the RF is currently vested with this right⁴. A reasonable balance seems to be necessary between the implementation of a citizen's constitutional right to protection in interstate bodies and the protection of the state sovereignty. This is necessary lest the constitutional norm on the protection of rights in interstate bodies should turn into an "illusory" norm.

In this regard, it seems important to analyze the existing experience of appeals of citizens of the Russian Federation to interstate bodies for the protection of human rights, in particular, to the European Court of Human Rights (hereinafter — the ECHR), as well as to assess the impact of judgments of the European Court on the Russian legal system which is positive despite the difficulties faced by the state in their implementation.

It is to be recalled that according to Part 3 of Art. 46 of the Constitution of the RF, upon exhaustion of all available national legal remedies everyone can apply to interstate bodies for the protection of human rights and freedoms on the basis of international treaties of the RF. This constitutional guarantee is most actively used by the citizens of the Russian Federation through the European Court of Human Rights.

Over the more than 20-year-long history of Russia's participation in the system of the European Court, a significant number of judgments have been issued, most of them acknowledging violations of certain articles of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter — the Convention) by the Russian Federation. The relationship is traced: the larger the country,

¹ [Electronic resource]. URL: <https://sozd.duma.gov.ru/bill/885214-7> (accessed on: 29.01.2020).

² Note: Art. 79 of the Constitution presently reads as follows: "The Russian Federation can participate in interstate associations and transfer part of its powers to them in accordance with international treaties, unless this entails restrictions on human and civil rights and freedoms and contradicts the foundations of the constitutional system of the Russian Federation" // Constitution of the RF. Corpus of Legislation of the RF, 04.08.2014, № 31, art. 4398.

³ [Electronic resource]. URL: <https://sozd.duma.gov.ru/bill/885214-7> (accessed on: 29.01.2020).

⁴ See: On Constitutional Court of the Russian Federation: Federal Constitutional Law dd. 21.07.1994 No. 1-FKZ (as amended on 29.07.2018), Ch. XIII.1 "Consideration of cases on the possibility of executing judgments of the interstate body for the protection of human rights and freedoms" // SPS Consultant +.

the more judgements there are against it⁵. The term “judgments” is used in the meaning specified in Art. 46 of the Convention as the final document delivered on the merits of the case and binding on the parties. Based on the ECHR judgments, changes are made to the legislation of the RF, the state reports on the enforcement of judgments to the Committee of Ministers of the Council of Europe.

Although ECHR judgments are often criticized by the legal community, many of them influenced the reforming of the Russian legal system and generally strengthen the legal guarantees for the protection of the rights of citizens of the RF.

It is appropriate to mention “pilot judgments” of the ECHR against the RF in which the state is ordered to take general measures to solve a systemic or structural problem in order to prevent repeated violations of the Convention in the future.

In particular, the pilot judgment “Burdov v. Russian Federation” (No. 2) dated January 15, 2009⁶ drew attention to the long-term non-enforcement of court judgments by government bodies. In pursuance of this resolution, Federal Law No. 68-FZ dd. 30.04.2010 “On Compensation for Violation of the Right to Judicial Proceedings within a Reasonable Time or the Right to Enforcement of a Judicial Act within a Reasonable Time”⁷ was adopted which made it possible to apply to national judicial authorities in case of long-term non-enforcement of court rulings. This law was subsequently supplemented with norms that expanded its effect on non-property claims, for example, on the state’s obligations to provide an apartment or fulfill other obligations in kind⁸, which was a response to the pilot judgment in “Gerasimov and Others v. Russian Federation”.

As a result of the work carried out to amend the legislation of the RF, a new national legal remedy was created, and the flow of complaints to the ECHR about non-enforcement of court judgments practically dried up.

Positive influence on the Russian legal system was also exerted by the pilot judgment in the case of “Ananiev and Others v. RF” of 2012 concerning the conditions of detention in pre-trial detention facilities. The problem of the conditions of detention in pre-trial detention facilities has been quite topical for the Russian Federation. The first case in which the European Court drew attention to the conditions of detention in penitentiary institutions was the judgment on “Kalashnikov v. Russia” of 2002.⁹ Apart from the monstrous conditions of detention, one of the major issues was that of the reasonableness of confinement. Courts in the Russian Federation practically did not state the reasons for the extension of the terms. From the moment of the ruling in the Kalashnikov case, reforms of the penitentiary system began aimed both at improving the conditions of detention and at strengthening the constitutional guarantees of citizens’ rights, in particular, the right to a fair trial.

Despite the efforts made by the Russian authorities, namely in pursuance of the judgment on “Ananiev and Others v. Russian Federation”, nine federal laws, one resolution of the Government of the Russian Federation and a number of departmental normative legal acts were adopted^{10, 11}. For example, one of such acts was Order of the Ministry of Construction of Russia dated April 15, 2016 No. 245/pr “On Approval of the Set of Rules “Pretrial Detention Facilities of the Penal Enforcement System. Engineering Rules”¹¹ which, among other things, provides for an increase of the norm of exercise yards, the number of shower heads, as well as the arrangement of the premises for a psychologist and group work, complete isolation of the bathroom in cells, etc.

Nevertheless, the conditions of detention in penitentiary institutions are still classified by the European Court as torture conditions¹². This situation leads to the issuance of new resolutions regarding the

⁵ Russia and the European Court of Human Rights: What’s Next? // Bulletin of the European Court of Human Rights. Russian edition, 2015. P. 137.

⁶ Case “Burdov v. Russian Federation” (No. 2) (complaint No. 33509/04) // Russian reports of the European Court, 2009, No. 4.

⁷ On Compensation for Violation of the Right to Legal Proceedings within a Reasonable Time or the Right to Execute a Judicial Act within a Reasonable Time: Federal Law No. 68-FZ dd. 30.04.2010 // SPS Consultant +.

⁸ See: On Amendments to the Federal Law “On Compensation for Violation of the Right to Judicial Proceedings within a Reasonable Time with regard to Awarding Compensation for Violation of the Right to Enforce of a Judgment Providing for the Execution by the State of Property and (or) Non-Property Claims Within a Reasonable Time”: Federal Law No. 450-FZ. 2016 // SPS Consultant +.

⁹ Case “Kalashnikov v. Russian Federation”, judgment of the ECHR dated 15.07.2002 (complain No. 47095/99) // Guide to Case Practice of the European Court of Human Rights for 2002. M., 2004. P. 315.

¹⁰ Report on the results of monitoring of law enforcement in the Russian Federation for 2014 //SPS Consultant+.

¹¹ On Approval of the Set of Rules “Pretrial Detention Facilities of the Penal Enforcement System. Engineering Rules”: order of the Ministry of Construction of Russia dated 15.04.2016 № 245/pr //SP Consultant+.

¹² See: Case “Barsukov v. RF”. 2017. // Russian reports of the European Court, 2017, № 3; “Solonenko v. RF”. 2018. // Russian reports of the European Court, 2018, № 2.

conditions and reasonableness of detention. For example, in 2016 the court adopted the Resolution in the case “Zherebin v. Russian Federation”¹³ stating the systemic nature of the problem and proposing an effective approach to its solution. The court noted that at present the Russian courts state the reasons for the extension of the term of detention; however, there is no proportionality between the reasons and the restriction, the burden of proving the absence of reasons for the extension of the term of detention rests with the accused¹⁴. As stated by lawyer of the European Court of Human Rights M. Kh. Gilmittidina, “the rationale of the court judgment should contain an analysis of the personal situation of a particular person and comply with the logic of Art. 5 of the Convention built on the principle of restraint in exceptional cases only”¹⁵, with one cannot but agree with, of course. Such an approach, on the one hand, will strengthen the legal guarantees of the protection of citizens’ rights, on the other hand, it will increase the authority of the national judicial system.

To create an effective compensatory remedy, the Ministry of Justice of Russia has developed a draft federal law “On Amendments to Certain Legislative Acts of the Russian Federation (in terms of improving the compensatory judicial remedy against violations related to the failure to ensure proper conditions of detention and in places of deprivation of liberty)”. The bill stipulates amending the Federal Law dd. July 15, 1995 No. 103-FZ “On Detention of Suspects and Accused of Crimes” and the Criminal Penal Code of the RF, namely, the consolidation of the right to compensation through legal proceedings for the damage caused by inappropriate conditions of detention, regardless of the presence of the fault of government bodies and their officials from the public treasury of the Russian Federation¹⁶.

It should also be noted that amendments have been made to the Criminal Procedure and Civil Procedure Codes of the Russian Federation, their norms now allowing resumption of proceedings in the case in view of new or newly discovered circumstances; for example, in accordance with paragraph 2 of Part 4 of Art. 413 of the Code of Criminal Procedure of the RF, new circumstances include “a violation of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms in the consideration of the criminal case by the court of the Russian Federation established by the European Court of Human Rights”. Such innovations allow review of the case already at the national level and exclusion of the consequences of violation of the Convention. These changes are quite progressive and were made in pursuance of the ECHR judgment in “Posokhov v. the RF” of 2003.

Apart from pilot judgments, significant consequences were also entailed by resolutions such as: “Shtukaturv v. Russian Federation”, in pursuance of which amendments were made to the Federal Law dd. April 6, 2011 No. 67-FZ “On Amendments to the Law of the Russian Federation “On Psychiatric Care and Guarantees of Citizens’ Rights in its Provision” and the Civil Procedure Code of the RF”¹⁷ and Art. 29, 30 and 33 of the Civil Code of the RF which introduced the institution of partial legal capacity. Placement of a person in a psychiatric hospital requires the person’s consent, and in its absence — a motivated court decision with the obligatory presence of the person concerned¹⁸.

Changes were also made in pursuance of judgments, such as: “Putintseva v. Russian Federation” 2012 — adoption of the Regulations of the Military Police of the Armed Forces of the Russian Federation; “Kormacheva v. RF” 2004 — reduction of the terms of civil and criminal proceedings, compensation for judicial red tape, “Kiyutin v. RF” 2011 — termination of the automatic removal of HIV-infected citizens, and many others.

Reforming of the legislation in pursuance of such decisions is certain to have a positive effect on law enforcement practice and strengthens the legal and constitutional guarantees for the protection of citizens’ rights.

However, the state often faces difficulties in the implementation of ECHR judgments. These difficulties are primarily related with the fact that some decisions touch upon the problem of the relationship

¹³ Case “Zherebin v. Russian Federation” (complaint № 51445/09): ECHR judgment dd. 24.03.2016 // Bulletin of the European Court of Human Rights. 2016. № 12.

¹⁴ *Gilmittidina M. Kh.* From Kalashnikov to Zherebin: Development of the Problems of the Validity of Detention // Russian Chronicle of the European Court. 2019. No. 3. P. 151.

¹⁵ *Ibid.*

¹⁶ Report on the results of monitoring of law enforcement in the Russian Federation for 2017. // SPS Consultant +.

¹⁷ On Amendments to the Law of the Russian Federation “On Psychiatric Care and Guarantees of Citizens’ Rights in its Provision” and the Civil Procedure Code of the Russian Federation: Federal Law dd. 06.04.2011 № 67-FZ // Corpus of Legislation of the RF, 11.04.2011, № 15, art. 2040.

¹⁸ *Gracheva S. S.* Respect for the Rights in the Provision of Psychiatric Care and the Rights of Disabled Persons // Russian Yearbook of the European Convention on Human Rights / T. K. Andreeva, E. E. Baglaeva, G. E. Besedin et al. M. : Development of legal systems, 2019. Issue 5: Russia and the European Convention on Human Rights: 20 years together. P. 145.

between the national and international legal order. With the introduction of amendments to the Constitution of the Russian Federation, it will become even more relevant. For example, the issue of the relationship between the international and national law was raised in the ECHR judgment in the case "Anchugov and Gladkov v. Russian Federation"¹⁹. The European Court found a violation of the requirements of Art. 3 of Protocol No. 1 to the Convention, taking the side of the applicants who complained that, as convicted prisoners held in custody they could not participate in the elections. Thus, the execution of the judgment came into collision with the Constitution of the Russian Federation, in accordance with Part 3 of Art. 32 of which "Citizens who have been declared legally incapable by a court, as well as those held in places of imprisonment under a court verdict, do not have the right to elect and be elected". Accordingly, in order to execute the decision, it is necessary to amend the Constitution, and this does not seem possible, since Art. 32 is included in Chapter II of the Constitution which is particularly difficult to amend. In a collision of the national constitutional and international law, and the constitutional law that is not subject to revision, there is an inevitable problem of comparability of the second with the first.²⁰

As stated by P. A. Vinogradova²¹, in the opinion of the Constitutional Court of the Russian Federation expressed in Resolution No. 21-P, by which after amendments are made to the Federal Constitutional Law on the Constitutional Court of the Russian Federation, the Constitutional Court of the Russian Federation is empowered to recognize the decisions of the ECHR as unenforceable in the event of their inconsistency with the Constitution, the availability of the problems in the ECHR related to deviation from the principle of subsidiarity creates the risk of situations in which an orientation towards rather abstract norms of the ECHR may lead to ignoring the will of the constitutional legislator in an interstate legal structure that does not imply the transfer of such an element of state sovereignty to it²².

The problem of the interpretation of the Convention by the European Court and the resulting impossibility to execute some judgments is debatable both in other countries and in the Russian Federation. However, in this case it is certainly necessary to search for a compromise in order to prevent, on the one hand, a violation of the principle of state sovereignty, and on the other hand, the deterioration of the position of citizens of the state as applicants under the complaints.

One cannot but agree with the opinion of Professor A. I. Kovler, who notes: "... due to the fact that the Constitution vests the principles and norms of international law with legal force that exceeds the force of the national law, one can speak of the supremacy of its norms. But any lawyer must take care of the observance of legal certainty; therefore every conflict between national constitutional norms and supranational norms must be resolved "peacefully"²³. That is, a dialogue is necessary between the national and international legal systems which should pursue one goal — proper provision of human rights. As S. L. Budylin notes: "The real problem here is not whether the "national" or "supranational" will win, but rather, how the joint work of government bodies of each country and international institutions can be organized in the best way to enable them to achieve the common goal"²⁴.

Thus, it would be more effective if the Constitutional Court of the RF gave conclusions on the compliance of one or another method of executing the decision with the Constitution of the RF, without questioning its very "enforceability"²⁵.

¹⁹ Case "Anchugov and Gladkov v. Russian Federation" (complaint No. 11157/04, 15162/05): ECHR judgment dd. 04.07.2013 // Bulletin of the European Court of Human Rights, 2014, № 2.

²⁰ *Blankenagel Alexander*. "Good-Bye, Council of Europe!" or "Council of Europe, let's talk!"? Commentary on the judgment of the Constitutional Court of Russia of April 19, 2016 on the enforceability of the judgment of the ECHR in the case of Anchugov and Gladkov of July 4, // the Comparative Constitutional. 2016. No. 6. P. 146.

²¹ *Vinogradova P. A.* The Procedure for Resolving Conflicts of Constitutional and Conventional Interpretation // Russian Justitia. 2015, No. 11. P. 32.

²² In the case of constitutionality verification of article 1 of the Federal law provisions "On ratification of the Convention on Human Rights and Fundamental Freedoms and the Protocols thereto", paragraph 1 and paragraph 2 of article 32 of the Federal law "On international treaties of the Russian Federation", part 1 and part 4 of article 11, paragraph 4 of part 4 of article 392 of the Civil Practice Act of the Russian Federation, part 1 and part 4 of article 13, paragraph 4 of part 3 of article 311 of the Arbitration Procedure Code of the Russian Federation, part 1 and part 4 of article 15, clause 4 of part 1 of article 350 of Code of Administrative Judicial Procedure of the Russian Federation and paragraph 2 of part 4 of art. 413 of the Code of Criminal Procedure of the Russian Federation in connection with the request of a group of State Duma deputies: resolution of the Constitutional Court of the Russian Federation No. 21-P of 14.07.2015 // «Vestnik Konstitutsionnogo Suda RF» («Russian Constitutional Court Bulletin»), No. 6, 2015.

²³ *Kovler A. I.* European Convention in the International System of Human Rights: a monograph. M. : IZiSP, Norma, INFRA-M [IZiSP, Norma, INFRA-M], 2019. P. 300.

²⁴ *Budylin S. N.* Convention or Constitution? International Law and State Sovereignty Limits // Lex. 2013, No. 12. P. 78.

²⁵ *Kovler A. I.* European Convention in the International System of Human Rights: a monograph. M. : IZiSP, Norma, INFRA-M [IZiSP, Norma, INFRA-M], 2019. P. 303.

Nevertheless, despite all the difficulties of interaction between the Russian Federation and the European Court of Human Rights, this is the case when together it is difficult, and apart it is impossible. The reforms carried out in pursuance of the decisions of the European Court should be continued, because they are designed to strengthen the constitutional guarantees for ensuring human rights, which in the end should lead to minimizing the gap between the rights enshrined in the Constitution of the Russian Federation and their practical implementation. The European Court of Human Rights works on the basis of the principle of subsidiarity, it should complement the system of national justice, but not replace it, so the choice of the method of execution of the judgment of the European Court is with the state. The aim of the legislative changes made on the basis of ECHR judgments appears to be to achieve the effectiveness of national justice.

References

1. *Blankenagel, A.* "Good-Bye, Council of Europe!" or "Council of Europe, let's talk!"? Commentary on the judgment of the Constitutional Court of Russia of April 19, 2016 on the enforceability of the judgment of the ECHR in the case of Anchugov and Gladkov of July 4, 2013 [«Proshchay, Sovet Evropy!» ili «Sovet Evropy, davay pogovorim!»? Kommentariy k Postanovleniyu Konstitutsionnogo Suda Rossii ot 19 aprelya 2016 goda ob ispolnimosti Postanovleniya ESPCH po delu Anchugova i Gladkova ot 4 iyulya 2013 goda] // the Comparative Constitutional Review [Sравnitelnoe konstitutsionnoe obozrenie]. 2016. No. 6. P. 135–150. (In rus)
2. *Budlyn, S. N.* Convention or Constitution? International Law and State Sovereignty Limits // Lex [Zakon Journal]. 2013, No. 12. Pp. 64–80. (In rus)
3. *Vinogradova, P. A.* The Procedure for Resolving Conflicts of Constitutional and Conventional Interpretation // Russian Justitia. 2015, No. 11. Pp. 30–33. (In rus)
4. *Gilmitdinova, M. Kh.* From Kalashnikov to Zherebin: Development of the Problems of the Validity of Detention [Ot Kalashnikova do Zherebina: razvitiye problematiki obosnovannosti soderzhaniya pod strazhey] // Russian Chronicle of the European Court [Rossiyskaya khronika Evropeyskogo Suda]. 2019. No. 3. Pp. 151–156. (In rus)
5. *Gracheva, S. S.* Respect for the Rights in the Provision of Psychiatric Care and the Rights of Disabled Persons [Soblyudeniye prav pri okazanii psikhiatricheskoy pomoshchi i prav nedeyesposobnykh lits] // Russian Yearbook of the European Convention on Human Rights [Rossiyskiy yezhegodnik Yevropeyskoy konventsii po pravam cheloveka] / T. K. Andreeva, E. E. Baglaeva, G. E. Besedin et al. M. : Development of legal systems [Razvitiye pravovykh sistem], 2019. Issue 5: Russia and the European Convention on Human Rights: 20 years together [Vyp. 5: Rossiya i Yevropeyskaya konventsia po pravam cheloveka: 20 let vmeste]. 576 p. (In rus)
6. The Case "Barsukov v. Russia" 2017 [Delo «Barsukov protiv Rossii» 2017 g.] // Russian chronicle of the European Court [Rossiyskaya khronika Evropeyskogo Suda]. 2017, No. 3. (In rus)
7. The Case of "Burdov v. Russia" (No. 2) (application No. 33509/04) [Delo «Burdov protiv Rossiyskoy Federatsii» (№ 2) (zhaloba № 33509/04)] // Russian Chronicle of the European Court [Rossiyskaya khronika Evropeyskogo Suda], 2009, No. 4. (In rus)
8. The Case of "Solonenko v. Russia", 2018 [«Solonenko protiv Rossii» 2018 g.] // Russian Chronicle of the European Court of Justice [Rossiyskaya khronika Evropeyskogo Suda]. 2018, No. 2.
9. *Kovler, A. I.* European Convention in the International System of Human Rights: a monograph [Yevropeyskaya konventsia v mezhdunarodnoy sisteme zashchity prav cheloveka: monografiya]. M. : IZiSP, Norma, INFRA-M [IZiSP, Norma, INFRA-M], 2019. 304 p. (In rus)
10. The Decision of the ECHR of July 4, 2013 The Case of Anchugov and Gladkov v. Russia (application No. 11157/04, 15162/05) [Postanovleniye YESPCH ot 04.07.2013 «Delo "Anchugov i Gladkov protiv Rossiyskoy Federatsii" (zhaloba № 11157/04, 15162/05)]] // Bulletin of the European Court of Human Rights [Byulleten' Evropeyskogo suda po pravam cheloveka]. 2014, No. 2.
11. The Decision of the ECHR of July 15, 2002 Case "Kalashnikov v. Russian Federation" (complaint No. 47095/99) [Postanovleniye YESPCH ot 15.07.2002 Delo «Kalashnikov protiv Rossiyskoy Federatsii» (zhaloba № 47095/99)] // 2002 European Court of Human Rights case-law guide [Putevoditel' po pretsedentnoy praktike Evropeyskogo suda po pravam cheloveka za 2002 god]. M., 2004? 504 p. (In rus)
12. The Decision of the ECHR of March 24, 2016, the Case "Zherebin v. Russian Federation" (complaint No. 51445/09) [Postanovleniye YESPCH ot 24.03.2016 Delo «Zherebin protiv Rossiyskoy Federatsii» (zhaloba № 51445/09)] // Bulletin of the European Court of Human Rights [Byulleten' Evropeyskogo suda po pravam cheloveka]. 2016. No. 12. (In rus)
13. Russia and the European Court of Human Rights: What Next? [Rossiya i Evropeyskiy Sud po pravam cheloveka: chto dal'she?] // Bulletin of the European Court of Human Rights. Russian edition. [Byulleten' Yevropeyskogo Suda po pravam cheloveka. Rossiyskoye izdaniye]. 2015. No. 3. Pp. 136–146. (In rus)