
The Role of the Constitution Court of Russian Federation in the Mechanism of Human Rights Provision and Support: International and Domestic Aspects

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Abstract:

The article is devoted to analysing the various aspects of implementation of constitutional principles of human rights in the Russian Federation. As an object of the study, the authors have selected public relations that have emerged as a consequence of judicial protection of human rights.

Alongside with the judicial entities, the European Court of Human Rights plays an important role in supporting the human rights. While analysing the norms of international and domestic law in the Russian Federation, authors conclude that, while implementing the rights of each and every one for judicial protection, Constitutional Court of the Russian Federation serves to protect the national security and government interests of the Russian Federation.

This is fairly justified, as national sovereignty is an important characteristic of modern government, the quality, which allows citizens to feel protected under the legal system.

Keywords: *Provision of human rights, international law, domestic legislation, judicial protection, Constitution of the Russian Federation, Constitutional Court of the Russian Federation, European Court of Human Rights.*

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1. Introduction

The preamble to the Constitution of the Russian Federation contains the fundamental points for the modern Russian government – regarding the provision and support of human rights and freedoms as well as unified connection between the multinational population of the Russian Federation and the global community. It declares the main democratic principles, and enforces the primacy of law in the government. The Constitution of the Russian Federation contains the list of the main human rights, as well as the effective mechanisms of their provision. In fact, the means of judicial protection, references to the Commissioner in human rights in the Russian Federation, departmental control, procurators oversight, up-to-date corrections of the current legislation.

Judicial protection is one of the most important mechanisms of human rights support on both domestic and international levels. According to part 1, Article 46 of the Constitution of the Russian Federation, each person is guaranteed judicial protection of ones' rights and freedoms.

Based on the main statements of the Constitution of the Russian Federation, each person has the right to refer to intergovernmental entities for protection of rights freedoms, if all the domestic means have been exhausted. At the same time, part 4 of the Article 15 of the Constitution of the Russian Federation state, that commonly accepted principles and norms of international rights and international agreements of the Russian Federation are key components of the legal system. If the international agreement of the Russian Federation differs from the law, international agreement terms are implemented.

Judicial protection of rights is carried out via the means of criminal, civil, administrative, arbitration and constitutional legal procedures. Constitutional legal procedures are the most important in the mechanism of provision and support for human rights, since it allows every citizen to realize ones' right for protection, set out in the legislation, which can be addressed in the Constitutional Court of the Russian Federation.

2. Methodological approach toward understanding of correlation between the norms of national legislation and legal decisions of the European court of human rights

The aim of the study is the substantiation of the norms of international and domestic rights in regard to the Constitutional Court of the Russian Federation (in the mechanism of human rights provision). In order to achieve the set aim and address the stated scientific problem the following methods have been employed: analysis, generalization, legal comparison, statistical, logical and documentation analysis, as well as other methodologies. Complex application of the stated methods has contributed towards a more detailed analysis of the stated problem, as well as

towards authors' conclusions. The problems include interaction between the norms of domestic legislation and legal rulings by the European Court of Human Rights (ECHR). These problems have often been the point of investigation by many scientists including domestic and international ones.

The Chairman of the Constitutional Court of the Russian Federation, the Honoured lawyer of the Russian Federation, PhD in Law, professor V.D. Zorkin in his article "Right of Power and Power of Right" (p. 1-12) based on the analysis of modern tendencies of global and domestic development, explains the need to protect and preserve national and international legal systems of government sovereignty regardless of any collisions, due to the supremacy of Constitution.

Honoured lawyer of the Russian Federation, PhD in law, professor S.Y. Marochkin (2014) in his article "The interaction of legal system as a common vector development (relationship between international community and the supremacy of law: intentions and reality)" illustrates via the example of rights supremacy, the global tendency towards increased interaction of legal systems, while pointing out the willingness of governments to protect the supremacy of rights at the domestic and international levels, as well as reliance on power as opposed to right and law.

Chervonyuk (2017) in the article "Limits to implementing the rulings of ECHR and the phenomenon of diffusion of European (international) law" explains the fact that the limits of discretion of national entities in the processes of implementing the ECHR rulings are determined by the nature of government sovereignty and the international obligations of the country. Defined by the Constitutional Court of FRG, the concept of "limited legal power of the rulings of ECHR" and used in practice by the Constitutional courts of Italy and Spain, Constitutional soviet of France and Supreme Court of Great Britain. The problem of preserving national identity by the European governments and traditional values has been of great controversy over the past couple of years, which has resulted in the phenomenon of blocking the domestic consensus, which is sufficient to repeal the rulings by ECHR, which create the risks to eliminate the procedures that are permitted by the domestic constitution.

Narutto (2013) in the article "Role of ECHR practice in the unification of national legislation regarding education" (p. 833-842) concludes that the Human Rights and Fundamental Freedoms Convention (further as Convention) is the "living" document that should be interpreted in the context of modern time and conditions. While analysing the problems related to the interaction between international and domestic law, foreign literature boasts with the notable workings of Grief N. Constitutional Law and International Law, United Kingdom Law in the Mid (1994), Jones J. Historical Introduction to the Theory of Law (1995), Kelsen H. General Theory of Law and State (1991).

Therefore it is possible to make an intermediate conclusion regarding the fact that the chosen problematic is of great importance for both the law theory and applied practice, which was reflected in the workings of domestic and foreign authors.

3. Theoretical, Informational and Empirical Grounds of the Research

Independence and compulsory implementation are the most important characteristics of any judicial decision. These qualities are at the basis of human rights provision and support: without it complete judicial human rights protection is impossible. In any other case, it would only have a declarative nature.

In both domestic and international levels, the decisions of judicial instances have a binding character. Constitutional Court of the Russian Federation considers the independence of judicial branch and the support for human rights, as well as the right for judicial protection, in the context of wide interpretation of ECHR being the access to the court and the principle of fair justice. Relying on the legal decisions by ECHR, Constitutional Court of the Russian Federation retains the position, according to which the right for judicial protection would have become illusory, if the legal system of government allowed for the final binding judicial decision remained unenforced. This is explained by the fact that the enforcement of the decision should be considered as an integral part of the right for judicial protection, given the p. 6 of the Convention.

The given points have found consolidation in other rulings by the Constitutional Court of the Russian Federation. Thus, according to the decision of ECHR as of 19th of March 1997 regarding “Hornsby vs. Greece”, Constitutional Court of the Russian Federation has stated that in “Burdov vs. Russia”, given the breach of p. 1 of the Protocol №1 of the Convention (“Protection of Property”) the government (Russian Federation) have deprived Burdov of the opportunity to claim the funds, that he has rationally expected to receive, where lack of funds is not a sufficient excuse. On the territory of the Russian Federation, the decisions made by the ECHR are implemented immediately, without reconsidering the earlier decision of the national court. Alongside, the current legislation of the Russian Federation doesn’t exclude the opportunity to reconsider the earlier judicial rulings given the legitimate decision of the ECHR.

Thus, the Supreme Court of the Russian Federation has stated, that in accordance to the guidelines of p. 46 of the Convention, taking into account the Recommendation of Committee of the Ministers of Council of Europe № R (2000) 2 as of 19th of January 2000 “Regarding the reconsideration of cases and renewal at the domestic level given the decisions of ECHR”, the basis for reconsideration of a judicial act due to new circumstances cannot simply be any breach of rules stated in the Convention or the Protocols. The decision can be reconsidered in the case, where the applicant continues to experience negative effects and the fair compensation provided by ECHR do not compensate for the breach of rights and freedoms.

Therefore, the Constitutional Court of the Russian Federation and the Supreme Court of the Russian Federation enforce a very important role of the decisions made by ECHR. This allows Russian citizens to actively utilize their right for judicial protection in the international institutions supporting human rights. Such thesis is proven by a significant number of complaints addressed towards Russian Federation and respective ECHR decisions.

Thus, since 1959 (initially the complaints were filed towards European Commission of Human Rights, which was later transformed into European Court of Human Rights) until 2017 the number of decisions involving Russian Federation accounts for 2253. In the period between 1959 and 2014 1604 decisions were made, 2015 – 116, 2016 – 228, 2017 – 305.

2127 decisions agree on at least one breach of the Convention or the relevant Protocols and only 94 state that no breaches have occurred. The remaining 32 relate to different matters: as they stated international agreements, excluding the complaints to be looked at, decisions about fair compensation, decisions changing earlier rulings, as well as decisions that state irrelevance of the case in regards of the ECHR.

As a rule of thumb, one statement defines a breach of multiple conditions of the Convention and the Protocols. Therefore, the number of breaches of Convention norms is significantly greater than the number of respective rulings. The greatest number of decisions for the period between 1959-2017, 932 were related to the violations of the rights to freedom and personal inviolability, 774 related to the violation of right to judicial review, 593 property rights, 523 property rights, 523 rights to the means of judicial protection, 199 rights to judicial review in the reasonable timeframe. Therefore the international mechanism of human rights protection is effectively implemented in the Russian Federation, especially the European one, through the appeals to the ECHR.

Part 4 of Article 15 of the Constitution of the Russian Federation allows citizens to realize their rights, however also places a burden on the government to comply and closely follow the means of protecting personal rights of an individual. This allows for implementation of both domestic and international mechanisms of rights protection. It also provides for effective protection of human rights, as well as enforces the principles of government accountability and responsibility for the protection of citizen rights and freedoms.

The following principles are reflected in a number of ECHR decisions. Thus, the ruling as of 10th of January 2012 “Ananyev and others” against the Russian Federation in reconsidering the inhuman conditions of arrested persons containment, therefore breaching the rules stated in Articles 3 and 13 of the Convention. ECHR has unilaterally agreed that the government responsible (the Russian Federation) must state in cooperation with the EU Council, the preventive and compensation

means of legal protection which are mentioned in the Convention. This was to happen within 6 months since the decision is said to be active. Apart from this, ECHR has ruled that government responsible should provide the compensation to all the victims of inhumane conditions of investigatory entities, who have filed their complaints before the ruling came into power, within 12 months since the date the ruling comes into power and from the date when their grievances were communicated to the government of the Russian government, in accordance to the point “b” of the 54th regalement of ECHR, dependent of what occurs at a later date. Government that has been informed of the situation must take measures to mitigate the negative consequences in respect of the individuals, the responsibility for whom is bared by the government. This should occur in compliance with the positive responsibilities as well as the standings of the Convention.

In this respect, it is also important to note the other rulings where the sides were represented by other countries. Formally such rulings do not make up the legal system of the Russian Federation, however they are the basis of the precedent practice of the ECHR in the area of implementation of Convention and Protocols standings, simultaneously serving as the official judicial interpretation of the norms of the given legal acts. Therefore, such rulings are also subject to review, analysis and should be accounted for in the norm-creating and rule-implementing practices of the Russian Federation.

International mechanism also affects the participating countries of various agreements in terms of requesting immediate implementation of agreed responsibilities. Thus, Article 46 of the Convention states that governments must execute the final ECHR rulings, where they represent one of the parties.

Vienna Convention in the article 27 has stated that the member cannot refer to the standings of domestic law as the means for justification of not fulfilling the agreement. USSR has signed up to the Vienna Convention, with the condition that USSR can use any means necessary to protect its own interests in case of other governments not complying with the Vienna regulations.

4. Discussion and results

Given all of the above mentioned, we should point out that at both national and international levels, judicial decisions are of binding character, which allows to implement the constitutional principle of human rights protection. Moreover, the norms of national and international right are not static. They evolve under the influence of internal and external factors, which include: changes in vectors of foreign and domestic policy, political, economic, cultural and other crises, local wars and armed conflicts.

At the moment, significant changes are being implemented in the current legislation of the Russian Federation. In fact, the Federal Constitutional as of 14th December

2015 №7-FCL, the Federal Law as of 21st of July 1994 №1-FCL “Regarding the Constitutional Law of the Russian Federation” has been augmented in the sphere of widening the powers of the Constitutional Court of the Russian Federation. The Constitutional Court of the Russian Federation checks for the “constitutionality” of the law, implemented in a particular case, regarding the requests of federal entities of executive power, which are competent in the sphere of protection of domestic interests in the disputes filed against the Russian Federation based on international agreements. The Constitutional Court resolves the disputes regarding the possibility of implementing the decision of international institution for human rights and freedoms protection.

Prerequisite for the acceptance of such norm has been the statement of the Constitutional Court of the Russian Federation as of 14th July 2015 № 21, which enforces the right for appeal to the Constitutional Court given the inability to implement the ECHR ruling. In cases where the decision by ECHR contradicts the Constitution of the Russian Federation, Constitutional Court of the Russian Federation is entitled to consider the possibility to execute the ECHR ruling and implement measures of individual and public character, aimed at providing the norms of the Convention.

In accordance to the norms a number of ECHR have not been implemented, including the “Anchugov and Gladkov vs. Russian Federation” ruling, where the individuals have complained that they, while being contained as prisoners have been refused the right to participate in the elections. ECHR has decided on the breach of rule of the Article 3 of the №1 Protocol to the Convention.

Constitutional Court of the Russian Federation has ruled that the decision is to be deemed impossible to implement, given part 3 of the Article 32 of the Constitution of the Russian Federation that holds supreme judicial power in the Russian legal system, which states that contained individuals do not possess any voting rights, which is defined by criminal law.

The case of “Konstantin Markin vs. the Russian Federation” is being appealed in relation to the refusal of national government to provide a three-year leave for child caring to the father with military occupation. ECHR has ruled the breach of resolutions in the statement 14 of the 8th Article of the Convention. Constitutional Court of the Russian Federation has decided impossible to satisfy the resolutions of the ECHR without having to reject the Articles of the Constitution of the Russian Federation, according to which, the Constitutional Court of the Russian Federation has found no breaching of constitutional rights in the case. Not abiding by the rules of ECHR has caused controversy amongst practitioners in law, judges and law theorists.

Special mention should be given to the opinion of the judge of the Constitutional Court of the Russian Federation Knyazev (2016) who states that the guaranteed

citizens right to judicial protection via appeal to the national judicial entities, assumes the responsibility of government to pay the most care and attention to organize the ECHR ruling implementation. Any deviation from ECHR rulings is only allowed under exceptional circumstances, when the implementation is incompatible with the fundamental statements of the Constitution of the Russian Federation. This however cannot act as a barrier to find the median solution via the cooperation of ECHR and Constitutional Court of the Russian Federation, which minimises the constitutional-conventional collusions.

The acceptance of the Federal Constitutional Law as of 14th of December 2015 № 7-FCL “About the introduction of changes to the Federal Constitutional Law “About the Constitutional Court of the Russian Federation”, which introduces new competences regarding the problems of execution of the decision of international human rights protecting entity. This has caused a backlash reaction from the European Commission for Democracy and Right (Venice Commission), which during its 106th session in March 2016 has concluded and intermediate ruling in relation to the changes in Federal Constitutional Law as of 21st of July 1994 № 1-FCL “About the Constitutional Court of the Russian Federation”. 107th session took place in June 2017, where it was decided that the existing changes assume that in the case of Constitutional Court of the Russian Federation finds the modality of the execution incompatible with the Constitution of the Russian Federation, the dispute should be returned to the executive entities or other government institutes until further action.

The statement regarding the matter that no measures can be applied if the Constitutional Court decides that ECHR decision is incompatible, directly contradicts international obligations of the Russian Federation regarding the Vienna Convention and Article 46 of the Convention of Human Rights and Basic Freedoms protection, and hence must be excluded.

Furthermore, not implementing the rulings by ECHR, that do not comply with the norms of national legislation, is not an exclusive prerogative of the Russian Federation. Thus, in the decisions made by the Constitutional Courts of Austria, Germany, Italy, Lithuania, Turkey and other European countries it clearly states that the rulings of ECHR cannot have an absolute supremacy over constitutional norms, and therefore their implementation requires careful concord with the national order.

Therefore, via the implementation of everyone’s right to judicial protection, Constitutional Court of the Russian Federation guards the principles of national security and the state interests of the Russian Federation. This appears to be fairly justified, as national sovereignty is one of the most important characteristics of the modern government, value that allows the citizens to feel protected under their legal system.

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