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Legal Analysis on the Decree (July 14, 2015 No. 21-P) of the Constitutional Court of the Russian Federation related to the enforcement of decisions of the European Court of Human Rights

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Abstract.

This article discusses the events that forced the deputies of the "State Duma" to appeal to the Constitutional Court of the Russian Federation with a demand to declare unconstitutional those federal laws which obliging Russia to comply with the decrees of the European Court of Human Rights (ECHR), and determine the reasons for the adoption of an ambiguous decision by the Constitutional Court of the Russian Federation. The article also analyzes the legal basis of the decision adopted by the Constitutional Court with the Constitution of the Russian Federation (laws) and international

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law. Based on the analysis, were evaluated possible legal measures and the degree of compliance by the Constitutional Court of the Russian Federation with the Constitution of Russia, laws and international law at the time of adoption of the decision of July 14, 2015 No. 21-P. The international legal consequences of the refusal or systematic non-enforcement of Article 46 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms are also disclosed.

Keywords: Human rights, Constitutional court, European Convention, Decrees of the European Court of Human Rights.

(Avrupa İnsan Hakları Mahkemesi kararlarının Uygulanması ile ilgili Rusya Federasyonu Anayasa Mahkemesi Kararı (14 Temmuz 2015 No. 21-P) hakkında Hukuki Analiz)

Öz

Bu makalede, "Devlet Duması" milletvekillerini Rusya Federasyonu'nu Avrupa İnsan Hakları Mahkemesi (AİHS) kararlarına uymaya zorlayan federal yasaları anayasaya aykırı ilan etme talebi ve Rusya Federasyonu Anayasa Mahkemesi

tarafından muğlak bir kararın kabul edilmesinin nedenlerinin belirlenmesi talebi ile Rusya Federasyonu Anayasa Mahkemesine başvurmaya zorlayan olaylar tartışılmaktadır. Makalede Rusya Federasyonu Anayasası (ve hukuku) ve uluslararası hukuk ile Anayasa Mahkemesi tarafından kabul edilen kararların yasal dayanağı da inceleniyor. Ayrıca makalede, Rusya Federasyonu Anayasa Mahkemesi tarafından alınan 14 Temmuz 2015 No. 21-P sayı ve tarihli kararın, iç hukuk, uluslararası hukuk ve Rusya Anayasası'na uygunluğu değerlendirilmiştir. 1950 tarihli İnsan Hakları ve Temel Özgürlükleri Koruma Sözleşmesi'nin 46. Maddesinin reddedilmesinin veya sistematik olarak uygulanmamasının uluslararası hukuki sonuçları da tartışılmıştır.

Anahtar Kelimeler: İnsan Hakları, Anayasa mahkemesi, Avrupa Sözleşmesi, Avrupa İnsan Hakları Mahkemesi (AİHM) Kararları.

Introduction

At the present stage in the life of world development, international law has begun to play an important role in the legal system of most states. More developed countries of the world began to participate in various international associations, organizations, and as full-fledged subjects of international law conclude international treaties depending on the circle of interests. Of course, such international legal relations have a significant impact on the internal legal system of the country that participate in these relations.

In the first half of the twentieth century, indescribable damage was inflicted on human rights and freedoms by two world wars. The desire for world domination, undemocratic political regimes, used all the necessary repressive measures, thereby inflicting tremendous damage to human rights and freedoms, which caused doubt in the development of all civilization. The terrible experience of the first half of the twentieth century made the world community treat the problem of human rights and freedoms differently. After those events, the first documents were adopted precisely in the field of ensuring human rights and freedoms (the Universal Declaration of Human Rights on December 10, 1948), and treats began to be concluded in the field of fundamental rights and freedoms.

In 1950, the European Convention for the Protection of Human Rights and Fundamental Freedoms was adopted by the member states of the Council of Europe (Belgium, Great Britain, Germany, Denmark, Iceland, Italy, Luxembourg, the Netherlands, Norway and France). In order to ensure compliance with the binding provisions of this Convention, the European Court of Human Rights (ECHR) was established in 1959. The ECHR, following a review of complaints of a violation of the Convention, makes binding decree. The enforcement (or non-enforcement) of the Council of Europe member states that have signed the Convention on the Protection of Human Rights and Fundamental Freedoms of a decree of the ECHR, shows the level of state compliance with human rights and freedoms.

Today, states which want and recognize the Convention for the Protection of Human Rights and Fundamental Freedoms are required to ensure respects for the human rights and fundamental freedoms on their territory, otherwise the state cannot call itself a full member in the global democratic community.

Although the Russian Federation joined the Council of Europe in 1996, but it was the first time that Russian citizens had the opportunity to defend their rights and freedoms at the ECHR in 1998, after ratification of the 1950 European Convention on

Human Rights.[1] This suggests that if all the necessary tools of judicial (not judicial) protection within the country have been exhausted, then citizens have the right to appeal to the international body for their violation. According to part 1 of Article 46 of the Convention, Russia has committed itself to comply with the judgments of the ECHR, which states: "The High Contracting Parties undertake to execute the final judgments of the Court in any case in which they are parties." This event has become a significant guarantee for the citizens of the Russian Federation in the field of human and civil rights and freedoms.

Events and Reasons for the Adoption of the Decree.

A long time before the adoption of decree by the Constitutional Court of the Russian Federation of July 14, 2015 No. 21-P, from the side of the state authorities of Russia, negative relations have developed regarding regulatory norms of a binding nature at the international level in the field of human

[1] Federal Law of March 30, 1998 N 54-FL "On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols"

rights and freedoms. Many discussions were held about the potential for non-enforcement of judgments of the ECHR.

The first attempts were made in 2011, when the first deputy chairman of the Federation Council (upper house of parliament) Alexander Torshin (2008-2015) used the rights of legislative initiative, introduced a bill to the State Duma, the content of which blocked the execution of judgments of the ECHR. For example, if the Russian courts adopted decrees on the basis of those legal norms that do not contradict the constitution and are not recognized unconstitutional in advance, then based on the decrees of the ECHR, it will be impossible to review such judgments of the Russian courts. The bill introduced at that time caused a public outcry and was not adopted by the State Duma.

And in 2013, the Constitutional Court of the Russian Federation came to the conclusion that there are reasons to overcome the decision of the ECHR at the state level. Thus, the Chairman of the Constitutional Court of the Russian Federation explained the position of such an opinion as follows: "When certain decisions of the Strasbourg court are doubtful in terms of the essence of the European Convention on Human Rights and all the more directly affect national sovereignty, fundamental constitutional principles, Russia has the right to develop a protective mechanism from such decisions."

The final prerequisite for the adoption of the decision by the Constitutional Court of July 14, 2015 No. 21-P was the Yukos case against Russia (complaint No. 14902/04). The ECHR adopted the decree about recognizing violations of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the Strasbourg court ordered the Russian Federation to pay an unprecedented amount of compensation of € 1.9 billion to Yukos shareholders (was declared bankrupt on August 1, 2007).[2] The Ministry of Justice, as well as other state bodies of the Russian Federation did not agree with the adopted decision of the ECHR and, they call the case politicized.

As a result, in 2015, the Constitutional Court of the Russian Federation accepted a statement "In the case of the verification of the constitutionality of the provisions of Article 1 of the Federal Law" On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto, "paragraphs 1 and 2 of Article 32 of the Federal the law "On international treaties of the Russian Federation", parts one and four of article 11, paragraph 4 of part four of article 392 of the Civil Procedure Code of the Russian Federation, parts 1 and 4 of article 13, paragraph 4 of part 3 of

[2] The Yukos case against Russia //complaint No//. 14902/04

article 311 of the Arbitration Procedure Code of the Russian Federation, parts 1 and 4 of Article 15, paragraph 4 of Part 1 of Article 350 of the Code of Administrative Procedure of the Russian Federation and of paragraph 2 of the fourth paragraph of Article 413 of the Criminal Procedure Code of the Russian Federation in due with the request group of State Duma deputies."

And the Constitutional Court of the Russian Federation issued the decree on the above case on July 14, 2015 No. 21-P, where it established its position regarding possible cases of non-execution, decrees of the ECHR.[3]

The Constitutional Court of the Russian Federation in its decree No. 21-P recognizes the norms and provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, but paradoxically calls into question only a specific article. Thus, the Constitutional Court of the Russian Federation in this decision appeals to the federal legislator to develop a special legal mechanism on the possibility and impossibility of implementing article 46 of the 1950 Convention.

On the basis of the adopted decree No. 21-P, the State Duma amended the Federal Constitutional Law (No. 1-FCL) On

[3] The Constitutional Court announced decree No. 21-P, On July 14, 2015

the Constitutional Court. These amendments allowed the Constitutional Court to make such decisions, which do not execute decrees of international courts (primarily the ECHR), if they contradict the Constitution of the Russian Federation. The above amendments entered into force after the signing of Russian President Vladimir Putin in December 2015.

Legal analysis of the decree adopted by the Constitutional Court.

The Constitutional Court in the adopted decision argues its position with the help of a number of normative legal acts in order to help avoid the enforcement of decisions of the ECHR that are unpleasant for the Russian Federation.

The main one and most important by value is the Constitution of the Russian Federation (RF). The Constitutional Court, referring to part 4 of Article 15 of the Constitution of the Russian Federation, which states that universally recognized principles and norms of international law and international treaties of the Russian Federation are an integral part of its legal system, specifies that the Convention is part of the Russian legal system and the decrees of the ECHR must be implemented on

the basis of their recognition as part of the legal system.[4] Also in continuation of the same part of the article of the Constitution of the Russian Federation it is said: "If the international treaty of the Russian Federation establishes other rules than those stipulated by internal law, then the rules of the international treaty are applied", which is of particular importance in the course of the enforcement of decrees of the ECHR against the Russian Federation, but, however, does not mention about this in its decision No. 21-P of the Constitutional Court. And in place of this, the Constitutional Court emphasizes the status of the Constitution as a normative legal act that has the highest legal force in Russia, and considers unacceptable the implementation of international treaties contrary to the foundations of the Constitutional system, human and civil rights and freedoms. Since such decisions may limit the rights and freedoms of human and citizen in violation of constitutional requirements. The Constitutional Court, emphasizing the legal and democratic features of the Russian Federation, and considers that the state recognizes on its territory universally recognized principles and norms of international law. According to the Constitutional Court following from Decree No. 21-P, Russia has the right to independently conclude international treaties, and may be a member of interstate associations. However, Russia is not going to give up state sovereignty, which according to the principles of

[4] The Constitution of the Russian Federation (was Adopted at National Voting on December 12, 1993)

the constitutional system ensures independence and supremacy of state power, guarantees the entire of completeness legislative, executive and judicial powers and independence in international communication.

The next international legal act, which the Constitutional Court indicates in its Decision No. 21-P, is the Vienna Convention on the Law of Treaties. As a counter argument to Article 26 of the Convention, which establishes the principle of the binding of an international treaty and its good faith implementation, the Constitutional Court focuses on the rules of interpretation.[5] The Constitutional Court emphasizes that the state has the right not to enforce or refuse to enforce decrees of the ECHR if, in interpreting the Convention, the ECHR does so contrary to the object and purpose of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms. Since such interpretations go beyond the obligations that States have accepted on a voluntary basis during the ratification of the Convention. Based on its argument, the Constitutional Court concludes that if certain provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms are contrary to imperative principles and

[5] Vienna Convention on the law of treaties (with annex). Concluded at Vienna on 23 May 1969

norms of international law (non-interference in the internal affairs of the state, state sovereignty), then these specific provisions do not must be considered. Thus, the decrees of the ECHR adopted on the basis of those provisions of the Convention that have similar discrepancies should not be binding.

Also, according to paragraph 1 of Article 46 of the same Vienna Convention on the Law of Treaties, if certain provisions of the treaty are concluded with a clear violation and affect domestic norms of fundamental importance, then there is a certain legal probability that the state has the ability to block these provisions. Otherwise, the state does not have the right to invoke the fact that some provisions of international law are contrary to its domestic law and refuse to comply with them. Among the norms of fundamental importance, the Constitutional Court noted Chapter 1 and 2 of the Constitution of the Russian Federation. If we pay attention to articles 15, 79 and 125 of the Constitution of the Russian Federation, we can see that Russia does not have the right to conclude international treaties that are not consistent with the Constitution, and the rules of the international treaty are not applied in the legal system (supremacy belongs to the Constitution), if they contradict constitutional provisions. In order to avoid signing conflicting norms of international law, the Constitution of the Russian Federation obliges public authorities to prevent violations of the

foundations of the constitutional system, which determines the measure of recognition, observance and protection of human and civil rights.

Consequently, the Constitutional Court of the Russian Federation in its decision draws the following conclusions: "The Russian Federation has the exclusive right to refrain from compulsory enforcement of decisions of the ECHR when such failure to fulfill obligations is the only way to avoid violations of basic norms and principles of the basic the law of the country." In this case, the Constitutional Court of the Russian Federation undertakes to consider the appeal of the President, the Government and other authorized bodies of state power about the impossibility of executing a decision of the ECHR in connection with a contradiction to the Constitution of the Russian Federation, and to make a decision on non-enforcement of the decision. And so, in general, in order to maintain the system as a whole, the Constitutional Court emphasizes its willingness to compromise. However, the level and boundaries of such intentions are not determined by the Constitutional Court.

The Vienna Convention on the Law of Treaties, which the Constitutional Court of the Russian Federation recalls in its decision, says in article 26 that the provisions of the European

Convention for the Protection of Rights and Fundamental Freedoms of 1950 and, based on this Convention, decisions of the ECHR, must be implemented by the member states without any reservations.

Mikhail Lobov, Head of the Council of Europe's Department of Politics and Cooperation in the Field of Human Rights, emphasizes the specificity of the Convention in Article 46. He believes that this article distinguishes the "treaty" as a whole from other classical instruments of international law by its implementation mechanism.[6] On the basis of the Convention, in history, for the first time, the decision of the international judicial body has certainly become binding, and in order to de facto execute these decisions a systematic control mechanism has been created by the intergovernmental body. Therefore, in the history of the long years of the existence of international justice, for the first time, a mechanism was developed not only for recommending, which explains and defines "the essence of law", but also a mechanism for the implementation of this right. The condition laid down in article 26 of the Vienna Convention on the Law of Treaties is strictly worded. That is, the state that signed the contract assumes the responsibility to conscientiously fulfill its obligations. Article 27 of the same Convention also

[6] Lobov M. Decisions of the European Court of Human Rights: legal consequences for the member states of the Council of Europe. Institute of Law and Public Policy. M., 2002

indicates to the parties that they have no right to invoke the provisions of domestic law as an excuse, refusing to fulfill their obligations under the contract. Based on this, states that have recognized the jurisdiction of the ECHR should not violate the principle of voluntary execution of the treaty under the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950.

In general, world practice shows that if an international treaty violates the basic norms of the constitutional order, then the state abstains and does not enter into a treaty. In the Russian Federation, there is a special rule regarding this procedure. For example, in accordance with part 2 of article 125 of the Constitution of the Russian Federation, the Constitutional Court resolves the issue of compliance with the Constitution of the Russian Federation that has not entered into legal force of international treaties. This is the very rule that does not allow accession, and restrains the Russian Federation from signing conflicting provisions of international treaties.

Sometimes, at some points, if an international treaty does not exclude a reservation in case of discrepancies between the norms of the international treaty and domestic law, then the state has the right to use this opportunity.

One way or another, the state recognizes international treaties as part of its legal system after they enter into legal force, and considers them fully consistent with the provisions of the fundamental domestic law.

Any legal norm, being a generally binding prescription, regulates certain social relations. However, unlike the provisions of domestic laws, international law is binding if the State party has accepted the responsibility to sign an international treaty. Article 26 of the Vienna Convention on the Law of Treaties of 1969 regarding this issue is fundamental in our opinion. Based on the fact that it is impossible to apply coercive measures against the state, the principles of voluntariness and the mandatory fulfillment by the state of its obligations under the treaty are the core on which the international treaty rests. And in the case when this or that state takes upon itself obligations to fulfill the contract, and suddenly refuses them for subjective reasons, confidence in such a state in the international arena is reduced and even undermined.

Thus, the Constitutional Court of the Russian Federation indicates in the decree of July 14, 2015 No. 21-P that Russia is far from the only one in the list of countries that evade the execution of decisions of the ECHR. The systematic creation of such precedents by states poses a threat, undermines the authority of the ECHR, and destroys the whole meaning of its existence.

The international legal consequences of the decree.

The head of the ECHR, Guido Raimondi, said in Strasbourg that Russia's refusal of enforcement of the decisions of the ECHR would lead to the expulsion and withdrawal of the country from the Council of Europe.[7]

He also emphasized that all the necessary statutory documents of the Council of Europe require participants to comply with absolutely all decisions of the ECHR, without exception, and other rules are not provided.

Of particular importance is article 46 of the European Convention on Human Rights, which is binding.

Raimondi added that we need and, of course, to distinguish between moments when there are difficulties in execution, and there are refusal of enforcement. And such refusals of enforcement are quite rare cases that can be listed on the fingers. However, do not underestimate them.

As far as we know, to date, only one country has officially announced its intention to refuse to enforce a number of decisions of the ECHR through the Constitutional Court, and

[7] https://www.ejiltalk.org/the-russian-constitutional-court-and-its-actual-control-over-the-ecthr-judgement-in-anchugov-and-gladko/

this is the Russian Federation. Thus, the Constitutional Court is empowered to choose which decisions of the ECHR to implement and which not. Britain earlier also announced the refusal to enforce a separate decision (on the right to vote of convicts), but in the end they stated that they are trying to find all possible solutions and implement the decision of the ECHR.

According to Raimondi, an official refusal to execute should have a consequence, and such a consequence should be the country's withdrawal from the Council of Europe.

The logic is as follows: either you fulfill the conditions outlined in Article 46 of the European Convention for the Protection of Rights and Fundamental Freedoms or refuse. And in case of refusal, if you refer to an internal system of legislation that does not accept the decisions of the ECHR, then in the end you have no right to be part of this organization.

The essence of all of the above can be summarized in the words of Raymondi: “You cannot remain and be part of the system if you deny the binding decision of the ECHR.”

Conclusion.

The ambiguous ruling of the Constitutional Court of the Russian Federation dated July 14, 2015 No. 21-P undermines the authority of the ECHR and the whole meaning of its existence if Russia, as a member Council of Europe, systematically refuses to execute the decree of the ECHR.

On this basis, in the event of a permanent violation of the European Convention for the Protection of Rights and Fundamental Freedoms by Russia, its exclusion from the Council of Europe will become inevitable.

At this stage, Russian statehood, due to its foreign policy, as well as several economic factors, such as oil prices, is experiencing difficult economic stagnation. Thus, the country is rapidly moving towards a tougher form of government in the direction of limiting the instruments for protecting human rights and freedoms.

A good example is the attempt to introduce new changes to the Constitution of the Russian Federation. Although all legal procedures for introducing and amending the Constitution have been completed, Russian President Vladimir Putin decided to appoint April 22, 2020 and hold a formal vote on the amendments to the Constitution. But today's COVID-19

pandemic, which swept the world, did not allow the Russian president to hold this vote. The number of cases of this disease forced the president to postpone the date of voting on constitutional amendments for July 1, 2020.

Although the main purpose of these amendments is to nullify the terms of the President of Russia V.V. Putin, but also of particular importance are questions regarding international treaties, where special powers are allocated to the Constitutional Court of the Russian Federation regarding the enforcement of decisions of international courts in Russia. The authorities in the Russian Federation will lead to the fact that the issue of non-enforcement or refusal to comply with the decisions of the ECHR was resolved not only at the decree of the Constitutional Court, but also at the level of the country's main law - the Constitution.

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