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**ACTUAL ISSUES OF EXECUTION OF THE EUROPEAN COURT OF HUMAN RIGHTS ACTS
BY STATE ADMINISTRATION BODIES**

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Abstract

The Purpose of this article is to identify the actual issues associated with the non-execution of decisions of the European Court of Human Rights (ECHR). The article uses a comparative analysis of the execution of ECHR acts in Russia and some member States of the Council of Europe. The main research methods are systemic and formal-legal. The authors analyzed some acts of ECHR which were not executed by Russia and the conclusions according to which the Constitutional Court of the Russian Federation recognized such acts as not possible to be executed.

Keywords

European Court of Human Rights – ECHR – Execution of ECHR – ECHR decisions

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Introduction

In March 1998, the Russian Federation ratified the Convention for the Protection of Human Rights and Fundamental Freedoms and thereby assumed the obligation to enforce the acts of the European Court of Human rights in cases in which it is a party. However, despite the fact that a number of States have ratified the Convention for the Protection of Human Rights and Fundamental Freedoms, a significant proportion of ECHR acts are not enforced. According to the report of the Committee of Ministers of the Council of Europe (CMCE) on the enforcement of decisions of the European Court of Human Rights (ECHR) for 2018¹, the five leaders in non-enforcement of decisions are as follows: Russia (1585), Turkey (1237), Ukraine (923), Romania (309), Hungary (252).

Most of the member States of the Council of Europe have established a mechanism under which the maintenance of the legal status of ECHR acts is entrusted to the legal institution in the form of the Constitutional Court. At the same time, the legal mechanism for the execution of acts of the ECHR in the Russian Federation fundamentally differs from the legal mechanism in other countries that have assumed the obligation to execute acts of ECHR. Thus, according to the Resolution of the Constitutional Court of the Russian Federation of 14.07.2015 N 21-P "In the Case on the Verification of the Constitutionality of provisions of article 1 of the Federal Law "Ratification of the Convention for Protection of Human Rights and Fundamental Freedoms and its Protocols"², points 1 and 2 of Article 32 of the Federal Law "On international treaties of the Russian Federation", parts 1 and 4 of Article 11, point 4 of part 4 of Article 392 of the Civil Procedure Code of the Russian Federation, parts 1 and 4 of Article 13, point 4 of part 3 of Article 311 of the Arbitration Procedure Code of the Russian Federation, parts 1 and 4 of Article 15, point 4 of part 1 of Article 350 of the Code of Administrative Legal Proceedings of the Russian Federation and point 2 of part 4 of Article 413 of the Criminal Procedure Code of the Russian Federation in connection with request of group of deputies of the State Duma", and later in accordance with the Federal Constitutional Law of 14.12.2015 N 7-FKZ "On Amendments to the Federal Constitutional Law "On the Constitutional Court of the Russian Federation"³ in the Russian Federation the Constitutional Court has assumed the power to verify the acts of ECHR for compliance with the Constitution of the Russian Federation.

Then, in case of the acts contrary to the Constitution of the Russian Federation, such acts shall not be executed on the territory of the Russian Federation. It gave rise to mixed feelings among many legal scholars and Human Rights defenders, since those provisions effectively limited the Constitutional Right to justice and directed their actions to defend the sovereign interests of the State, rather than article 2 of the Constitution of the Russian Federation, which stated: "The human being, its rights and freedoms are the supreme value.

¹ Council of Europe Committee of Ministers supervision of execution of judgments and decisions of the European Court of Human Rights. (Council of Europe committee of Ministers. 2018. 71-81). Available at: <https://www.coe.int/en/web/cm> (access date 15.02.2020).

² Resolution of the Constitutional Court of the Russian Federation of 14.07.2015 N 21-P "In the Case of the Verification of the Constitutionality of provisions of article 1 of the Federal Law "Ratification of the Convention on Protection of Human Rights and Fundamental Freedoms and its Protocols". Available at: <http://www.publication.pravo.gov.ru/Document/View/0001201507170018> (access date 15.02.2020)

³ Federal Constitutional Law of 14.12.2015 N 7-FKZ "On Amendments to the Federal Constitutional Law "On the Constitutional Court of the Russian Federation". Available at: <http://www.pravo.gov.ru> (access date 15.02.2020)

It is the duty of the state to recognize, respect and protect human and civil rights and freedoms"⁴.

It should not be forgotten that today the Council of Europe (CoE) is going through the not best times in relations with many participating countries. The organization therefore has to seek new mechanisms to improve the protection of Human Rights under the European Convention.

Mechanisms of the Council of Europe designed to ensure the implementation of ECHR decisions

One of the main characteristics of a court decision is its enforceability. Thus, the Resolution of the Constitutional Court of the Russian Federation of July 30, 2001 N 13-П states, inter alia: "The Constitution of the Russian Federation guarantees the state, including judicial, protection of the rights and freedoms of man and citizen (Article 45, part 1; Article 46, parts 1 and 2); protection of the rights and freedoms of man and citizen is the obligation of the state (Article 2). From these provisions in relation to Articles 1 (part 1), 15 (part 2), 17 (part 3), 18, 52, 53, 55, 71 (point " b " of part 1) and 118 of the Constitution of the Russian Federation, it follows that protection of the violated rights cannot be recognized effective if the judicial act or the act of other authorized body in due time is not executed"⁵.

This corresponds to the point 1 of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms and to practice of its application by the European Court of Human Rights, which in the Decision dated March 19, 1997 stated that "the right to judicial protection would be illusory if the legal system of the State allowed a final, binding judicial decision to remain inoperative to the detriment of one of the parties; execution of the decisions rendered by any court must be regarded as an integral part of "the court"⁶ . It was explained by the Supreme Court in the Decision of the Plenum from 10.10.2003 N 5 "About application by courts of law generally recognized principles and norms of International Law and International Treaties of the Russian Federation", which states that under article 6 of the Convention the execution of court decisions is regarded as a component of "judicial proceedings"⁷.

Even despite such a uniform approach to the enforcement of the Court's decision, today the Council of Europe is forced to test new mechanisms to improve the effectiveness of human rights protection in accordance with the Convention and, as a consequence, to focus on the enforceability of ECHR acts. Among these new mechanisms it is possible to allocate the Protocol N 16 to the Convention on protection of Human Rights and Fundamental Freedoms" (CETS N 214) signed in Strasbourg 02.10.2013. In accordance with this Protocol, the ECHR has the right to interpret the provisions of the Convention to the courts of the CoE member States. For example, at the end of April 2019, the ECHR received a request from the French court concerning surrogacy. The ECHR issued its first advisory opinion on this issue.

⁴ Constitution of the Russian Federation. Available at: <http://constitution.ru/en/10003000-01.htm> (access date 15.02.2020)

⁵ Bulletin of the Supreme Court of the Russian Federation. 2001, 6

⁶ Hornsby v. Grece Rec. 1997-II, fasc.33

⁷ Bulletin of the Supreme Court of the Russian Federation. 2003, 12

Moreover, as part of the introduction of new mechanisms, the Council of Europe has chosen Azerbaijan as an experiment to improve the enforceability of ECHR rulings. Under Protocol N 14⁸, the main supervisory body (the Committee of Ministers of the Council of Europe - hereinafter CMCE) is responsible for the execution of ECHR judgments. On this basis, CMCE submitted a request to the Grand Chamber of the ECHR for the failure of Azerbaijan to comply with the Court's decision. As a result, under these conditions for the first time in the practice of the ECHR, the Court made the following decision.

This is the case of 2014 Mammadov v. Azerbaijan⁹. According to this case Ilgar Mammadov, being an opposition leader since 2008, led the party "REAL". In 2013 he was arrested for organizing anti-government protests and then sentenced by the court to 7 years imprisonment. Having considered Mammadov's complaint about the violations committed during the arrest, the ECHR concluded that the actions of the Azerbaijan authorities did not comply with the provisions of articles 5, 6, 18 of the Convention. Further (in 2017) Mammadov filed a complaint against violations committed during the consideration of his case in the court of Azerbaijan. Considering the complaint, the ECHR recognized violations of article 6 of the Convention and ordered Azerbaijan to pay Mammadov 10 thousand euros.

However, according to the CMCE, Azerbaijan was not in a hurry to comply with the ECHR's rulings in either the 2014 or 2017 cases. Within the framework of the control over the execution of the ECHR decisions in the 2014 case, the CMCE was sending for three years demands to Azerbaijan for the immediate execution of the ECHR Decision and the release of Ilgar Mammadov from custody. All requirements were also left without satisfaction. The Council of Europe had to act radically and in accordance with Protocol N 14, the CMCE decided by the majority: to send an appeal to the ECHR containing the requirement to establish the fact of non-compliance with the ECHR decision in the case Mammadov v. Azerbaijan of 2014.

The purpose of Protocol N 14 to the Convention is to create a procedure for determining the fact of non-execution of the ECHR decision. According to the above-mentioned Protocol, the CMCE is entitled to send a request to the ECHR in the case of non-execution of the court decision. In turn, the ECHR confirms or refutes the fact of non-execution of the decision. It should be noted that the CoE Member States did not support the idea of additional penalty for non-execution of the ECHR decision, but the reasons for such a refusal should not be thought about.

As a result, the ECHR found itself in a difficult situation. Firstly, due to the fact that the consideration of the request from the Committee was for the first time, and all algorithms of actions were not thought out. For example, this is the period from which it is necessary to calculate the non-execution of the decision. Secondly, in the court's decision it was a question of violation of paragraphs of the Convention, as well as monetary compensation, but there was not a single paragraph concerning immediate release from custody.

With regard to the first situation, the ECHR could use an analogy with the practice of the EU Court, in which it indicated that it was its duty to establish the existence of a violation at the time of the Commission's appeal to the Court, but not to assess the subsequent actions of the state to eliminate violations taken after the appeal to the Court. The second

⁸ Explanatory Report to Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention.

⁹ Case Mammadov v. Azerbaijan. 2014, Reports of Judgments and Decisions 2014-I

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question is much more interesting. Azerbaijan quite reasonably noted in its withdrawal within the framework of the process that it fulfilled the decision of the ECHR, granted compensation to the applicant, the decision of the ECHR did not contain any other measures. Accordingly, the bases for consideration of this case at Court are absent.

However, despite all the arguments of the defendant, the Court granted the CMCE's application on the following grounds.

First, the ECHR pointed to article 3 of the Convention on the binding nature of its decisions (see para. 149), and also used the curious term "conclusions and spirit of those judgments".

Further, the ECHR informed that despite the fact that in principle the ECHR used specific provisions in other acts, for example, *Assanidze v. Georgia*¹⁰, however, the defendant must elect such measures of execution of the judgment, which would be in the spirit of this judgment. Moreover, the Committee of Ministers has the mandate to assess the compliance of those measures that have been taken by the defendant and the measures that must be implemented in the framework of implementation of the ECHR Decision. (pp. 154-155).

In paragraphs 163-164, the ECHR recognized that the Committee of Ministers, as part of the control measures for the completeness of the execution of Court decisions and in the course of its main activities, developed a set of norms, principles and rules of the Committee (*acquis*), which must be fully respected and maintained.

The court noted that Azerbaijan's refusal to implement the individual measures attributed to it by the Committee of Ministers had been fully proved. In the opinion of the Court, it is unacceptable to limit the flexibility of the CMCE by providing exclusively individual provisions in the decision. (para. 184). Thus, the key value is not the existence of a provision in the decision, but the assessment of the CMCE on the conformity of such decision with its conclusions and spirit.

Approaching the final part of its decision, the Grand Chamber noted that Azerbaijan, despite the positive reaction in the form of compensation and the construction of a plan for the execution of the ECHR decision, improperly fulfilled its obligations, as it did not release Mamadov before the appeal of CMCE to the ECHR.

According to the ECHR, its decisions are declaratory in nature and, above all, its task is to identify the main violations of the Convention by the Respondent state, and not to demand specific actions. Thus, the Court gives the defendant the opportunity to choose a measure to eliminate violations of the Convention, however, the assessment of this measure should be carried out by the CMCE.

This approach is fundamentally different from the Inter-American Court of Human Rights (IACHR), which does not allow the defendant to take any independent action in accordance with the spirit of the decision. The decision of the IACHR is primarily aimed at defining specific lists of measures necessary, in the opinion of the IACHR, for the protection of Human Rights (amendments to regulations, prosecution of persons guilty of human rights violations, etc.).

¹⁰ Case *Assanidze v. Georgia* 71503/01. 2004, Reports of Judgments and Decisions 2004-II
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In particular, this practice raises a question in the context of the fact that unlike the IACHR, which independently monitors the execution of its decisions, the ECHR is limited in its capabilities and control. According to the Convention, the control over the implementation of its decisions lies entirely with the CMCE.

In general, the question about the value of the CMCE is long overdue in the ECHR. Thus, 7 Judges expressed a dissenting opinion and stated that they do not agree with the decision of the majority of Judges of the ECHR on a number of grounds. First of all, neither in the first nor in the second case the ECHR demanded the immediate and unconditional release of Mammadov, although it could have done so. To demand from the State what is not specified in the judgment means to substitute for the Court, thereby undermining its legitimacy. It must be executed what is exactly in the judgment, and no "spirit" of the decision has anything to do with it. This group of Judges spoke very sharply both about the demands of the Committee of Ministers to release Mammadov during the ongoing processes to review his case at the national level, and about the negative public assessments of the Committee of Ministers in relation to these processes. In the view of a minority of Grand Chamber Judges, this is an open and unacceptable interference in and pressure on the administration of justice by an independent Court. As well as such negative assessments are interference in the administration of justice by the ECHR itself, which at that time considered Mammadov's complaint of violations of his rights during the first trial over him. Finally, this group of Grand Chamber Judges stated that the control functions of the Committee of Ministers were not unlimited, and that the measures ordered by the Committee must comply with the Court's decision, and the ECHR itself must verify this compliance precisely during the infringement procedure. This is a real challenge to the current practice of the Committee of Ministers, which, apparently, causes growing dissatisfaction and concern of the ECHR judges.

In conclusion, we can say that the very first decision of the ECHR on the request of the Committee of Ministers within the framework of the infringement procedure did not become a public "flogging" of the Respondent country, but, on the contrary, highlighted the shortcomings, problems and risks of the existing system of control over the execution of Court decisions. The ECHR took this opportunity to express its concern and disagreement with this practice, which questions the legitimacy of the Court.

Procedure of execution of judgments of the European Court of Human Rights in Russia: legal positions of the Constitutional Court of the Russian Federation

Russia, having acceded in 1998 to the European Convention on Human Rights and Fundamental Freedoms of 1950¹¹, "recognizes ipso facto and without special agreement the jurisdiction of the European Court of Human Rights to be binding on the interpretation and application of the Convention and its Protocols in cases of alleged violation by the Russian Federation of the provisions of these acts when the alleged violation occurred after these acts entry into force in respect of the Russian Federation"¹².

¹¹ Bulletin of International Treaties. 2001, 3

¹² The last paragraph of article 1 of the Federal Law of 30.03.1998 N 54-FZ "On Ratification of the Convention for the protection of Human Rights and Fundamental Freedoms and the Protocols thereto", Collection of Legislation of the Russian Federation (06.04.1998) 14 (1514).

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In accordance with article 46, paragraph 1, of the Convention, the High Contracting Parties undertake to comply with the final orders of the Court in cases to which they are parties.

At the same time, the Convention does not provide for any sanctions for failure to comply with Court orders. However, sanctions are provided by the Charter of the Council of Europe. Article 8 gives the Committee of Ministers the right to suspend membership or even exclude from the Council of Europe any member state guilty of Human Rights violations. Failure to comply with a Court order, refusal to comply with a Court order may be considered by the Committee of Ministers as a violation of Human Rights by the Respondent state, which in turn may result in the imposition of these sanctions.

In practice, however, no state has yet been expelled from the Council of Europe for non-compliance with Court orders, despite multiple cases of non-compliance.

What means the Respondent state will use to enforce the Court's decision is left to the discretion of the Respondent state itself. In the legal relations under consideration, legal personality belongs to the state as a whole, and not to a specific body. In general, for the Council of Europe it does not matter which body or official will execute the Court's decision, it is the prerogative of exclusively national regulation.

The state, as a subject of law, is quite complex and abstract concept. It is impossible to cover all its aspects with one concept. Thus, only a number of definitions can give a sufficiently complete idea of it. In this regard, it is necessary, first of all, to distinguish the concept of the state in broad and narrow sense of the word.

In a broad sense, the state can be defined as a universal, territorial and sovereign political organization of society, which administers it through public authority using a special apparatus of governance¹³. In other words, the state is a form of organization of society that arises at certain stage of its historical development.

In a narrow sense, the state is a political organization that unites the whole society, designed to manage its affairs, to eliminate emerging social conflicts, to ensure law and order and a certain regime of power¹⁴. In other words, the state is a mechanism for exercising public and political power in society, a mechanism for managing society.

This interpretation of the state is essentially identified with the concept of the state apparatus, the system of its bodies endowed with powers, but does not define the legal personality of the state as a mandatory property of the subject of legal relations.

According to O. V. Pinaeva, the legal capacity of the state as a subject of legal relations coincides and arises by virtue of the fact of its existence, i.e. no acts and facts of registration are required for the recognition of the Russian state as a subject of law¹⁵.

The legal status of the State is enshrined, but not specified in the norms of the Constitution of the Russian Federation. Since in the system of internal state relations the

¹³ A. V. Krasnov y A. V. Skorobogatov, Theory of State and Law: textbook (Moscow: RSUJ, 2016).

¹⁴ V. N. Kornev, Theory of state and law: textbook (Moscow: RAJ, 2014).

¹⁵ O. V. Pinaeva, State as a subject of legal relations in modern society. Ph.D. Thesis (Yaroslavl, 2008).

state exercises its powers through its bodies, the extent of legal capacity of the state in a certain sphere of relations is determined by the combination of rights and obligations assigned to a particular state body and a certain position of employee in this body¹⁶. This is the specificity of the legal capacity of the state.

The Russian legislation does not have a single normative document regulating the mechanism and procedure for the execution of decisions of interstate bodies. Actually, the need for such special regulation has never arisen. The competence of special bodies is derived from the powers enshrined in the Constitution of the Russian Federation, Federal Constitutional and Federal Laws, codified acts, certain provisions¹⁷ and other regulatory legal acts. Thus, the mechanism of execution of decisions of interstate judicial bodies in Russia seems to be legally secured.

Despite the existence of a domestic mechanism for the enforcement of decisions of intergovernmental bodies for the protection of Human Rights and Fundamental Freedoms, in Russia since 2015 there has been a practice, subsequently perceived by the legislator, suggesting the possibility of non-enforcement of such decisions in whole or in part in order to protect the Constitution of the Russian Federation.

The Constitution of the Russian Federation refers to the Basic Law of the Russian state and society, adopted by its multinational people, which is a single normative legal act of the highest legal force, regulating the foundations of the constitutional (social and state) system, the foundations of the relationship between the individual and the State and public authorities in the Russian Federation¹⁸. The Constitution of Russia has special legal properties that distinguish it from other normative legal acts – sources of the Russian Law. Such properties include: its supremacy, the highest legal force, direct action, a special order of its adoption, revision and amendment, special legal protection and others.

To protect the constitutional order, ensuring the direct action of the Constitution and protection of Constitutional Rights and Freedoms of human and citizen, it is established the Constitutional Court of the Russian Federation (article 125 of the Constitution of the Russian Federation¹⁹, article 3 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation"²⁰).

The starting point in the revision of Russia's position on the unconditional execution of ECHR decisions was the decision of July 14, 2015 № 21-P, in which the Court, based on the analysis of the content of the principles of International Law (sovereignty of States, bona fide execution of international treaties, non-interference in the internal affairs of a state), having studied the practice of European States (Italy, Germany, Austria, UK), examining the international legal and constitutional doctrine, decided that the execution of the ECHR decision can be recognized as impossible for Russia, if it is based on the provisions of the

¹⁶ I. L. Bachilo, Information Law: textbook (Moscow, 2010).

¹⁷ The Regulation on the Federal Penitentiary Service", approved by Decree of the President of the Russian Federation from 13.10.2004 N 1314 "Issues of the Federal Penitentiary Service", Collection of Legislation of the Russian Federation (18.10.2004) 42 (4109).

¹⁸ S. G. Pavlikov y I. A. Umnova, Constitutional Law: textbook (Moscow: Alpha-M, SIC INFRA-M 2015).

¹⁹ Constitution of the Russian...

²⁰ Federal Constitutional Law of 21.07.1994 N 1-FCL "On the Constitutional Court of the Russian Federation". Rossiyskaya Gazeta (1994. July 23).

Convention for the protection of Human Rights and Fundamental Freedoms in the interpretation leading to their discrepancy with the Constitution of the Russian Federation.

The reason for changing the position of the highest judicial body of Russia has become in recent years, the trend of broad interpretation of the provisions of the Convention by the ECHR²¹, leading to a conflict between decisions of the ECHR and the constitutions of the countries parties to the Convention, as well as the invasion of the ECHR within the scope of state sovereignty.

In December 2015, the Federal legislator has amended the Federal Constitutional Law "On the Constitutional Court of the Russian Federation"²², having assigned to the Constitutional Court of the Russian Federation a new power – the resolution of the question of possibility of execution of the decision of interstate body on protection of the rights and freedoms of the individual requests of the Federal Executive authority of the Russian Federation competent in the field of provision of protection of interests of the Russian Federation by consideration of interstate body on protection of the rights and freedoms of the individual complaints lodged against the Russian Federation under the international treaty of the Russian Federation.

Authorization is exercised by verifying the possibility of execution, in accordance with the Constitution of the Russian Federation, the decision of interstate body for the protection of human rights and freedoms adopted under the provisions of the international treaty of the Russian Federation in their interpretation of interstate body on protection of human rights and freedoms, from the point of view of the Foundations of the constitutional system of the Russian Federation and established by the Constitution of the Russian Federation legal regulation of human rights and freedoms. Following the results of consideration of the case, the Constitutional Court of the Russian Federation adopts a decision about the possibility or impossibility of the performance, in whole or in part, in accordance with the Constitution of the Russian Federation of the decision of interstate body on protection of human rights and freedoms, accepted under the provisions of the international treaty of the Russian Federation in their interpretation of interstate body on protection of human rights and freedoms, in respect of which a request was made. Thus, in case of recognition of the decision of the ECHR unenforceable, no actions (acts) aimed at the execution of the relevant decision may be taken in Russia.

To date, the Constitutional Court of the Russian Federation has verified two decisions of the ECHR under this new power. These are the Order of July 04, 2013 in the case "Anchugov and Gladkov v. the Russian Federation" (complaint N 11157/04, 15162/05), adopted on the basis of the provisions of article 3 "Right to free elections" of Protocol N 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms as interpreted by the European Court of Human Rights, and the Order of July 31, 2014 in the case of "JSC "Yukos Oil company" v. the Russian Federation" (complaint No. 14902/04), issued on the basis of article 1 of Protocol N 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms as interpreted by the European Court of Human Rights.

Thus, the Resolution of the Constitutional Court of the Russian Federation of 19.04.2016 N 12-P "On the case for resolving the issue of possibility of execution according to the Constitution of the Russian Federation of the Resolution of the European Court of

²¹ V. D. Zorkin, Russia and Strasbourg. Rossiyskaya Gazeta, 22 Oct., 2015.

²² Federal Constitutional Law of 14.12.2015...

Human Rights of July 4, 2013 in the case " Anchugov and Gladkov v. Russian Federation" in connection with request of the Ministry of Justice of the Russian Federation"²³ established according to articles 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:

- the impossibility of execution of the decision of the ECHR in terms of general measures, suggesting amendments to Russian legislation (and thereby changing based on this judicial practice), which would limit the voting rights not of all prisoners serving sentence in places of deprivation of liberty by the sentence of the court, because the requirement of article 32 (part 3) of the Constitution of the Russian Federation means the imperative ban, which does not give right to vote to all prisoners serving sentences in places of deprivation of freedom defined by the criminal law;

- the possibility and feasibility of this decision of the ECHR in Russian Law and judicial practice in terms of general measures ensuring fairness, proportionality and differentiation the application of restrictions of electoral rights, because in accordance with article 32 (part 3) of the Constitution of the Russian Federation and specifying its provisions in the Criminal Code of the Russian Federation, as a general rule, it is eliminated the penalty of deprivation of liberty and thus the disenfranchisement of convicts who committed for the first time, minor offenses. Imprisonment is for crimes of medium gravity and serious crimes, as a more strict kind of punishment from among provided for in the Special Part of this Code for the commission of the crime, judicial sentence. Consequently, it entails the deprivation of electoral rights only if less strict kind of punishment cannot provide achievement of the purposes of punishment;

- the right of the Federal Legislator to optimize the system of criminal penalties, including through the transfer of certain regimes of imprisonment to alternative types of punishment, although connected with the forced restriction of the freedom of convicts, but not entailing restrictions on their electoral rights;

- impossibility of execution of the specified decision regarding measures of individual character concerning citizens S.B. Anchugov and V.M. Gladkov, because the said citizens were sentenced to imprisonment for long terms for commission of particularly serious crimes and therefore couldn't count on access to electoral rights.

As we can see, the categorical nature of the constitutional ban on persons detained in places of deprivation of liberty under a court sentence has been removed – an opportunity of changing the criminal and electoral legislation on this issue has appeared. At the same time, as G.B. Romanovsky²⁴ notes, the change of the electoral legislation will inevitably face numerous difficulties from revision of the mechanism of electoral process to the risks of distortion of will of prisoners under the influence of criminals and the management of penitentiary institutions.

By the Order of 19.01.2017 N 1-P "On the case of resolution of the issue of possibility of execution according to the Constitution of the Russian Federation of the resolution of the European Court of Human Rights of July 31, 2014 in the case "JSC YUKOS Oil company v.

²³ Bulletin of the Constitutional Court of the Russian Federation. 2016, 5

²⁴ G. B. Romanovsky, "Case of Anchugov and Gladkov and decisions of the Constitutional Court of the Russian Federation and bodies of constitutional control of foreign countries", Comparative Jurisprudence Vol: 135 (2017).

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Russia "in connection with request of the Ministry of Justice of the Russian Federation"²⁵ the Constitutional Court of the Russian Federation recognized according to the Constitution of the Russian Federation, its article 57 in interrelation with articles 15 (parts 1, 2 and 4), 17 (part 3), 19 (parts 1 and 2.), 55 (parts 2 and 3) and 79 that it is impossible to execute the ECHR ruling in terms of retroactive application of penalties for 2000 and 2001 and the enforcement fee for these sanctions against JSC "YUKOS Oil company", as well as in terms of enforcement proceedings, in the course of which the applicant company was charged a non-proportional enforcement fee in the amount of seven percent of the total amount of its outstanding taxes, penalties and fines and that the applicant company suffered material damage 1,866,104,634 (one billion eight hundred and sixty-six million one hundred and four thousand six hundred and thirty-four) euros, including compensation for inflationary losses, which Russia must pay to the company's shareholders, successors and heirs.

Verification of the possibility of execution of the ECHR decisions, in our opinion, is not a means of evading international obligations, but is a special mechanism for overcoming constitutional and conventional contradictions, as well as the protection of the constitutional identity of Russia as a sovereign state.

According to the Judge of the Constitutional Court of the Russian Federation S.D. Knyazev, the right guaranteed to citizens to judicial protection by applying to the bodies of supranational jurisdiction implies the duty of the state to take maximum care of the organization of execution of ECHR decisions²⁶. Therefore, the proposals of scientists^{27, 28} on the need to adopt a Federal Law on the procedure for execution of ECHR decisions, which would solve the issues of their place in the system of Russian law, the problems of their limited availability, their unification and universalization, can be considered very fair and require the attention of the legislator.

Conclusions

The European Court of Human Rights is experiencing quite serious difficulties at the present stage of development of international relations. One such outstanding problem is the enforcement of its decisions. The newly established mechanisms for the execution of Court's decisions, although intended to improve the situation, have so far revealed a number of conflicts at their launch. Even the ECHR Judges themselves are beginning to sound the alarm about the fact that a whole confrontation between the ECHR and the Committee of Ministers has opened. First of all, as noted by the Judges, the actions of the Committee of Ministers is actually trying to replace the Court, thereby undermining its legitimacy. Moreover, the actions of the Committee of Ministers appeared to be open and unacceptable interference with and pressure on the administration of justice by an independent court.

There are considerable problems regarding the execution of the Court's decisions at the state level. Some countries make statements about the politicization of certain decisions

²⁵ Bulletin of the Constitutional Court of the Russian Federation. 2017, 2.

²⁶ S. D. Knyazev, "Binding nature of ECHR rulings in the Russian legal system (based on the practice of the Constitutional Court of the Russian Federation)", Constitutional and Municipal Law Vol: 12 num 240 (2016).

²⁷ N. N. Gashina, "Some problems of implementation of decisions of the European Court of Human Rights in the Russian Federation", Eurasian advocacy Vol: 5 num 18 (2015).

²⁸ V. B. Evdokimov, "About supremacy of part 1 and part 4 of article 15 of the Constitution of the Russian Federation", Academy of the Prosecutor General's office of the Russian Federation Vol: 3 num 59 (2017).

of the ECHR and an attempt to interfere in the system of national legislation. Guided by the principle of sovereignty, some States began to introduce a filter into the procedure of execution of ECHR decisions for compliance of decisions of international courts with the Constitution of the country. The Russian Federation had not been an exception, having also established such a mechanism. In our opinion, the lack of a clear specified normative regulation of the procedure of execution of ECHR decisions is one of the main reasons for such different approaches to their execution by national states. The absence of real measures of responsibility for non-execution of Court decisions also further aggravates the situation. While the CoE member States do not come to a uniform opinion on the execution of the ECHR decision and do not consolidate the agreements in a normative manner, we suppose that each state will selectively approach such decisions, which of them to execute promptly, and which to evaluate for their compliance with the basic law.

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