ON RESOLUTION PRIORITY BY RUSSIAN FEDERATION CONSTITUTIONAL COURT OVER INTERSTATE BODY DECISIONS FOR THE PROTECTION OF HUMAN RIGHTS AND FREEDOMS

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ABSTRACT
This article examines the priority of Russian Federation Constitutional Court decisions over the decisions of interstate bodies for the protection of human rights and freedoms. Since the international treaty, the legal positions of the ECHR do not abolish the supremacy of the Constitution for the Russian legal system, the decisions of the ECHR are subject to implementation within this system only on condition that the supreme legal force of the RF Constitution is recognized. If the ECHR interprets the 1950 Convention as contrary to the RF Constitution, then in this regard, Russia refuses to follow literally the ruling of the ECHR. In conclusion, the authors note that the Constitutional Court of the Russian Federation ruled that it would decide the issue of the ECHR decision execution in each case individually but considering the recognition of the RF Constitution supremacy.

Keywords: Constitutional court. European court of human rights. Verification of legality. Enforcement of decisions. International law.

SOBRE A PRIORIDADE DE RESOLUÇÃO DO TRIBUNAL CONSTITUCIONAL DA FEDERAÇÃO RUSSA SOBRE AS DECISÕES DE ÓRGÃOS INTERESTADUAIS PARA A PROTEÇÃO DOS DIREITOS HUMANOS E DAS LIBERTADES

SOBRE LA PRIORIDAD DE RESOLUCIÓN DEL TRIBUNAL CONSTITUCIONAL DE LA FEDERACIÓN DE RUSIA SOBRE LAS DECISIONES DE LOS ÓRGANOS INTERESTATALES PARA LA PROTECCIÓN DE LOS DERECHOS HUMANOS Y LAS LIBERTADES

RESUMO
Este artigo examina a prioridade das decisões do Tribunal Constitucional da Federação Russa sobre as decisões de órgãos interestaduais para a proteção dos direitos humanos e das liberdades. Desde o tratado internacional, as posições jurídicas da CEDH não abrem a supremacia da Constituição para o sistema jurídico russo, as decisões da CEDH estão sujeitas à implementação neste sistema apenas na condição de que a força jurídica suprema da Constituição de RF seja reconhecido. Se a CEDH interpreta a Convenção de 1950 como contrária à Constituição da RF, então, a esse respeito, a Rússia se recusa a seguir literalmente a decisão da CEDH. Em conclusão, os autores observam que o Tribunal Constitucional da Federação Russa decidiu que decidiria a questão da execução da decisão da CEDH em cada caso individualmente, mas levando em consideração o reconhecimento da supremacia da Constituição da RF.


RESUMEN
Este artículo examina la prioridad de las decisiones del Tribunal Constitucional de la Federación de Rusia sobre las decisiones de los órganos interestatales para la protección de los derechos humanos y las libertades. Desde el tratado internacional, las posiciones legales del CEDH no abrieron la supremacía de la Constitución para el sistema legal ruso, las decisiones del CEDH están sujetas a implementación dentro de este sistema solo con la condición de que la fuerza legal suprema de la Constitución de RF sea Reconocido. Si el TEDH interpreta la Convención de 1950 como contraria a la Constitución de RF, entonces, a este respecto, Rusia se niega a seguir literalmente la decisión del TEDH. En conclusión, los autores señalan que el Tribunal Constitucional de la Federación de Rusia dictaminó que decidiría la cuestión de la ejecución de la decisión del CEDH en cada caso de forma individual, pero teniendo en cuenta el reconocimiento de la supremacía constitucional de RF.

INTRODUCTION

On December 16, 2015, the Federal Constitutional Law "On Amendments to the Federal Constitutional Law" and the Law "On the Constitutional Court of the Russian Federation" came into force. The law establishes a special legal mechanism for resolving the issue of the possibility or impossibility of an interstate body resolution execution for the protection of human rights and freedoms issued on the complaint against the Russian Federation. According to the Law, the basis for a case consideration is the revealed uncertainty about the possibility of executing a decision of an interstate body for the protection of human rights and freedoms, based on the provisions of the relevant RF international treaty in interpretation, presumably leading to their discrepancy with the RF Constitution (KAHN, 2019).

Based on the results of the case consideration, the Constitutional Court adopts one of the following decisions: 1) on the possibility of executing the decisions of an interstate body for the protection of human and civil rights and freedoms, in whole or in part, in accordance with the RF Constitution; 2) the impossibility of executing the decision of an interstate body for the protection of human and civil rights and freedoms, in whole or in part, in accordance with the RF Constitution.

The law established a new special legal mechanism for resolving the issue of the possibility or impossibility, from the point of view of the principles of the Constitution supremacy and its supreme legal force, to execute the resolution of an interstate body for the protection of human and civil rights and freedoms issued on the complaint against Russia. They determine the order and procedures for considering the request.

METHODS

The methodological basis of the study was formed by the general provisions of the procedural sciences: constitutional law, civil procedural law, and administrative procedural law. The following methods of scientific knowledge were used during the study: intersectoral, and dialectical method.

RESULTS AND DISCUSSION

The law does not name which bodies are interstate for the protection of human rights and freedoms. These can be treaty bodies created by the relevant conventions to monitor the implementation of international treaties in the field of human rights. Currently there are 9 such bodies, as well as international judicial and arbitration institutions. But mainly the Law was adopted in pursuance of the Decision of the Russian Federation Constitutional Court (July 14, 2015), in which he ruled that he would decide the issue, first of all, on the execution of judgments of the European Court of Human Rights (hereinafter the ECHR) in each case individually. The decisions of the ECHR will be enforceable only with the recognition of the supremacy of the RF Constitution.

On July 1, 2015, the Russian Federation Constitutional Court considered the case at the request of the RF State Duma deputies during an open session on checking the constitutionality of the provisions of the Article I of the Federal Law "On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols thereto, Clauses I and II of the Article 32 of the Federal Law, the Law "On International Treaties of the Russian Federation", parts one and four of the Article 11, paragraph 1Y, part four of the Article 392 of the RF Civil Procedure Code, parts 1 and 4, Article 13, paragraph 4, part 3 of the Article 311 of the RF Arbitration Procedure Code, parts 1 and 4 of the article 15, paragraph 4 of part 1, the article 350 of the RF Administrative Procedure Code and paragraph 2, part four of the article 413 of the RF Criminal Procedure Code.

The basis for the case consideration was the revealed uncertainty in the following question: whether the legal provisions contested in the request comply with the RF Constitution. In the opinion of a group of deputies, these legal provisions do not comply with the RF Constitution, its Articles 15 (parts 1, 2, 4) and 79, since they actually oblige Russia, its legislative, executive and judicial authorities, to unconditional execution of the ECHR judgment - even in the cases if it contradicts the RF Constitution. Thus, the law enforcement officer is put in a hopeless situation, since such a conflict may turn out to be insoluble. Therefore, the protection of constitutional guarantees is more important, top-priority, than the ECHR decision. In the Decree of July 14, 2015, the Russian Federation Constitutional Court noted that the Convention Of 1950 and its Protocols are the normative basis for their inclusion in the legal system of the Russian Federation in accordance with the Article 15, Part 4 of the RF Constitution. These acts form the legal and regulatory framework for the execution of the ECHR judgments against Russia.
At the same time, the Constitutional Court resolves the issue of the ECHR decision implementation on the complaint against Russia, which imposes obligations on the state, the implementation of which is not consistent with the RF Constitution. The legal positions of the European Court of Human Rights, containing the assessments of national legislation or concerning the changes in its provisions, do not cancel the priority of the RF Constitution for the Russian legal system and therefore are subject to implementation within this system only if the RF Constitution is recognized as the highest legal force. The decision of the ECHR cannot be executed if it violates some provision of the RF Constitution and contradicts it. At the same time, it is noted in the Resolution of the Constitutional Court: “In such cases it is not about the validity or invalidity of the international treaty for Russia as a whole, but only about the impossibility of observing the obligation to apply its norms in the interpretation given to it by the authorized interstate body in the framework of a specific case consideration.” Thus, the decision of the Constitutional Court and the Law rejected the demand of the State Duma deputies to declare the federal laws specified in the request unconstitutional, obliging Russia to comply with the decisions of interstate human right bodies (KARAHIOZ, LEHKA, MINCHENKO, 2019).

The RF Constitution has the highest legal force, and absolute legal supremacy. The international treaty, the legal positions of the ECHR do not abolish the supremacy of the Constitution for the Russian legal system, therefore, the decisions of the ECHR are subject to implementation within this system only on condition that the supreme legal force of the RF Constitution is recognized. If the ECHR interprets the Convention of 1950 as contrary to the RF Constitution, then in this regard, Russia refuses to follow the ruling of the ECHR literally. The supremacy of the Constitution during the execution of the ECHR decisions can be ensured exclusively by the RF Constitutional Court, and if it concludes that the ECHR decision is incompatible with the Constitution, then it cannot be enforced. The rapporteur, the judge of the RF Constitutional Court, S. Mavrin noted the following: “the thing is about a conflict of interpretation, not a conflict between the Constitution and the European Convention.” The Constitutional Court is entrusted with a responsible task to overcome possible collisions of constitutional and conventional norms and jurisdiction (KNYAZEV, 2013).

According to the Article 31 of the Convention 1950 on Fundamental Human Rights and Freedoms, the jurisdiction of the ECHR considers all issues of interpretation and application concerning the provisions of the Conventions and Protocols thereto. According to A. Kovler, “It is obvious that there is a possibility of a conflict of interpretation between the Court and the highest national courts – and these conflicts appear from time to time” (KOVLER, 2013, KALINICHENKO, 2016). In this regard, a procedure is being developed according to which the highest national courts, primarily the constitutional courts, can send requests for an advisory opinion to Strasbourg concerning the interpretation of the Convention and the Protocols thereto. In order to expand interaction between the state bodies of the Convention member states, the Committee of Ministers prepared the Protocol No. 16 to the Convention of 1950, in which the Court is empowered to issue advisory opinions on the requests from the supreme courts and the courts of the member states, however, such an initiative to receive requests from 47 states causes slight panic from the Strasbourg judges, who are overburdened with the current affairs (KOVLER, 2013).

According to V. Starzhenetsky, the ruling of the Russian Federation Constitutional Court and the decisions of the courts of other states “show that a serious rethinking of the widespread and, perhaps, overly simplified concepts of international law norm primacy is gradually taking place and an intensive search for more flexible, compromise legal constructions is underway which allowed states to block or modify an action of international legal prescriptions unacceptable for their legal systems in a number of cases” (STARZHENETSKY, 2015).

If the RF federal executive body considers that the execution of an interstate body decision for the protection of human rights and freedoms is impossible, since it is based on the provisions of the RF international treaty concerning the interpretation leading to their discrepancy with the RF Constitution, then it has the right to apply to the Russian Federation Constitutional Court with a request on resolving the issue concerning the possibility of executing the decision of an interstate body for the protection of human rights and freedoms. The Russian Federation Constitutional Court is the highest judicial body of constitutional control (GLAS, 2019, PANKE, 2020).

Based on the Law (December 16, 2015), the RF Ministry of Justice sent a request to the Russian Federation Constitutional Court for the first time, in which it asks to resolve the issue of the possibility concerning the execution of the ECHR judgment. On April 19, 2016, the Constitutional Court adopted the Resolution on the case resolving the issue of the execution possibility, in accordance with the RF Constitution, concerning the judgment of the European Court of Human Rights (July 4, 2013) in the case “Anchugov and Gladkov v. Russia” in relation with the request of the RF Ministry of Justice. S.B. Anchugov and V.N. Gladkov was sentenced (as a substitute for the death penalty) to 15 years for committing especially grave crimes.
They were deprived of their active suffrage and they were denied voting in the elections of the State Duma and the President of the Russian Federation. This gave rise to an appeal to the ECHR with a complaint about the violation by the Russian Federation of the right to free elections under Article 3 of the Protocol No. 1 to the Convention of 1950 for the Protection of Human Rights and Fundamental Freedoms. The ECHR decided that the prohibition of convicts to participate in elections and vote established in Russia violates this article (CHEBOTAREVA, 2019). In essence, the ECHR recommended to amend the Article 32, Part 3 of the RF Constitution, which stipulates that “the citizens who are recognized by the court as legally incompetent, as well as those held in places of imprisonment by court verdict, do not have the right to elect and be elected”. This article can only be changed by adopting a new RF Constitution (the Articles 134 and 135 of the RF Constitution). Thus, the Constitutional Court ruled to recognize the judgment of the ECHR as impossible.

The Constitutional Court returned to the question that international legal acts, which include the European Convention of 1950 and the ECHR judgment, are an integral part of the RF legal system. The Constitutional Court noted that the European Convention OF 1950 has greater legal force in the law enforcement process than federal law, but not equal and not greater than the legal force of the RF Constitution (the clause 4.2). The Decree of April 19, 1916 notes that “the interaction of the European conventional and Russian constitutional legal order is impossible in the context of subordination, since only a dialogue between different legal systems is the basis for their proper balance (clause 1.2)”. At the same time, the Constitutional Court “is ready to search for a legitimate compromise for the sake of maintaining this system”, and “the limits of a compromise in this matter are outlined by the RF Constitution (the clause 1.2)".

The Constitutional Court, interpreting the concept of “deprivation of liberty”, considers that the federal legislator can optimize the system of criminal punishments and is entitled to amend the criminal and penal legislation (paragraph 5.5.). The thing is about the transfer to alternative types of punishment. For example, the regime of colonies-settlements can be transformed by federal legislation into a separate type of criminal punishment, which is not subject to the restrictions provided by the Article 32, Part 3 of the RF Constitution.

CONCLUSIONS
The Constitutional Court of the Russian Federation openly “does not oppose” the ECHR decisions, but it directly relies on the principle of the Constitution supremacy, ensures it, and thereby forms constitutional requirements for legislative and law enforcement bodies.

The Russian Federation Constitutional Court ruled that it would decide the issue of the ECHR decision execution in each case individually but considering the recognition of the RF Constitution supremacy. The Constitutional Court emphasized the signs of sovereignty, that the transfer of RF powers to interstate associations does not mean its renunciation of state sovereignty.

SUMMARY
Thus, the Constitutional Court correctly prioritized the constitutional regulation of the decisions taken in relation to Russia by interstate bodies for the protection of human rights and freedoms. And the proposals made after the decisions of the Constitutional Court and the adopted Law that Russia intends to secede from the Council of Europe and denounce the Convention of 1950 are unlikely to be implemented. The principle of cooperation with the Council of Europe, a responsible approach to the observance of all conventions adopted by the Council of Europe and the ECHR decisions are important for Russia. Undoubtedly, all this strengthens the legal system of the Russian Federation, and the ECHR has repeatedly defended the rights of Russian citizens. The said Law is aimed at ensuring that the executive branch fulfills the decisions of interstate bodies, including courts, the jurisdiction of which is recognized by Russia. The decisions of the Constitutional Court and the Law of December 16, 2016 adopted on its basis are an incentive to bring the RF legislation into line with the standards of the Council of Europe and the decisions of the RF state bodies adopted on their basis.

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