

Conference Paper

Problems of Russia's Integration into the Legal Framework of Europe

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Abstract

In the article the authors examine the issues of legal interaction between Russia and the European Court of Human Rights on the basis of generalization of empirical results obtained during the sociological survey of groups of respondents of different professional backgrounds. The blocks of legislative and law enforcement problems that need to be resolved are highlighted. The conclusion is made about the need to transform and unify the existing Russian legislation and law enforcement practices, relying on the practice of the European Court of Human Rights and the practice of national courts. Legislative proposals and law enforcement recommendations are formulated based on the results of the study.

In the article, on the basis of generalization of empirical results obtained during the sociological survey of groups of respondents with different professional backgrounds, the authors examine the issues of Russia's interaction with the European Court of Human Rights. The blocks of legislative and law enforcement problems that need to be resolved are highlighted. Drawing on the practice of the European Court of Human Rights and the practice of national courts, it is concluded that it is necessary to transform and unify the existing Russian legislation and law enforcement practice. The results of the study formulate legislative proposals and enforcement recommendations.

Keywords: justice, civil proceedings, Convention for the Protection of Human Rights and Fundamental Freedoms, European Court of Human Rights, law enforcement, case law

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1. Legal Integration: Causes, Conditions, Consequences

The processes of integration inherent in modern society and law are conditioned by various factors: economic conditions, scientific and technological progress, political situation, international processes. Joining international organizations dictates the need to build relationships on the basis of partnership and mutual respect. Russia acceded to the Statute of the Council of Europe in 1996 [14], ratified the Convention for the Protection of Human Rights and Fundamental Freedoms on March 30, 1998 ("the Convention"), recognized the jurisdiction of the European Court of Human Rights (hereinafter referred to as the ECHR) [2], which increased the guarantees of the protection of rights, strengthened the responsibility of the state, and also determined the need to solve a large block of legal and social issues. The problems of interaction between the ECHR and Russia are due to the fact that "the implementation of the European Convention in individual member countries is a great challenge for the national legal system, capable of repeatedly questioning traditional ideas and understanding of national law" [19, p. 18].

2. Study Methodology

The study of various aspects of the interaction of the ECHR with the Russian Federation led to the conduct of a sociological survey of various professional groups of respondents in 2015-2017, both directly and indirectly related to the sphere of jurisprudence (judges, lawyers, entrepreneurs of small and medium businesses, students of law faculties). The survey was conducted by the authors of the article in 2015-2017 on the territory of the Altai Territory by random sampling among the groups of respondents who received training in supplementary education programs at the Center for Advanced Studies on the basis of the FSBEI of Higher Education "Altai State University": 1 - peace and federal judges (60 respondents); 2 - attorneys of the Bar of the Altai Territory (70 respondents); 3 - students of the Faculty of Law (57 respondents); 4 - entrepreneurs of small and medium-sized businesses (50 respondents). The methodology used to collect data is a questionnaire. The questions of the questionnaire were formulated taking into account the specifics of the interviewed group of respondents by the authors of the article and provided for a closed form of answers with a view to faster processing of the received data. There was a possibility of refusing to answer the question, however, not one of the respondents took that privilege. All participants were within the walls of the university, where various kinds of research and experiments form part of the educational and

research process. The questions, answers, the number of questionnaires and the data obtained (quantitative and%) are presented in Table. 1-4.

TABLE 1: The results of the survey of peace and federal judges
(the number of respondents,% of the number of respondents).

№	Questionnaire questions	The answer options		
		Option A.	Option B.	Option C.
1	Do you use ECHR judgments in your activities?	Often 7 (12%)	Sometimes 34 (56%)	Never 19 (32%)
2	What are the problems with the application of ECHR acts in your activities?	Lack of clarification on the procedure and mechanisms for their application 20 (34%)	Lack of a methodology for their use 16 (26%)	Absence of official translations and a database of acts 24 (40%)
3	How do you assess the consequences of the processes of globalization and integration?	Positively 0 (0%)	Negatively 2 (3%)	there are both pros and cons 58 (97%)
4	The judgments of the ECHR have:	The higher legal force in comparison with the decisions of the Russian courts 37 (62%)	According to the legal force below the decrees of the courts of the Russian Federation 0 (0%)	Their legal nature and legal force in the Russian Federation remain unclear 23 (38%)
5	How do you assess the consequences of the impact of ECHR judgments on the development of the law of the Russian Federation?	Only positively 22 (36%)	Only negatively 0 (0%)	There are both pros and cons 38 (64%)
6	Is it necessary to create an official website containing official translations of all ECHR judgments?	Yes, there is such a need 56 (94%)	There is no such necessity 0 (0%)	It is necessary, but premature (for financial, organizational reasons) 4 (6%)
7	Is it necessary to borrow foreign models and mechanisms in Russia?	Yes, if this increases the effectiveness of the protection of rights 43 (72%)	No, there is always a national equivalent 2 (3%)	There are enough borrowed models in the law of the Russian Federation and additional copying is inexpedient 15 (25%)

Note. Data are calculated by summing up the answers for each of the proposed options; the numeric values are converted to percentages.

3. Results of the Study

The analysis of the obtained data revealed the following facts. The inevitability of the globalization and integration processes taking place in the world community (economy, law, politics) along with obvious advantages (international cooperation, common

TABLE 2: The results of the questioning of lawyers (*the number of respondents,% of the number of respondents*).

№	Questionnaire questions	The answer options		
		Option A.	Option B.	Option C.
1	How often do you use the ECHR judgments in your activities?	Often 3 (4%)	Sometimes 40 (58%)	Never 27 (38%)
2	How do you assess the consequences of the impact of ECHR judgments on the development of the law?	Only positively 39 (56%)	Only negatively 3(4%)	There are both pros and cons 28 (40%)
3	Which factor influences the development of Russian legislation and law to a greater extent?	Economic conditions 10 (15%)	Political situation and international processes 33 (49%)	Judicial practice and public relations 27 (36%)

Note. Data are calculated by summing up the answers for each of the proposed options; the numeric values are converted to percentages.

economic space, unification of legislation, etc.) have negative aspects (loss of some identity, institutions and the mechanisms of law characteristic of the national system, "adjusting" to the conditions of international organizations, etc.). Thus, 97% of judges, 91% of entrepreneurs and 91% of students noted that the consequences of globalization have both positive and negative moments (see Table 1, Table 3, Table 4).

At the same time, the respondents emphasize the need for Russia to work more actively with various international organizations, including the ECHR, despite the inequalities in economic development, the lack of mutual openness, the instability of the Russian legal framework, the peculiarities of mentality, and distrust of business. Cooperation with international structures contributes to the enhancement of guarantees for the protection of the rights of Russian citizens, economic, legal development and Russia's integration into the European field. The importance of the consequences of the impact of the ECHR acts is confirmed by the data: 36% of judges, 56% of attorneys, 46% of students assess the impact of ECHR acts on the development of Russian law exclusively as positive, the majority of respondents (64% - judges, 40% lawyers, 53% - students) note the presence of both pluses and minuses (see tables 1 to 4).

When answering the question about the consequences of the impact of ECHR acts on the national legal field, one could not expect from the surveyed absolute coverage of all existing negative moments and place responsibility on them to indicate the reasons for such consequences, and even more so to formulate possible solutions. However,

TABLE 3: The results of the questioning of law faculty students (*the number of respondents,% of the number of respondents*).

№	Questionnaire questions	The answer options		
		Option A.	Option B.	Option C.
1	How do you assess the consequences of the processes of globalization and integration?	Positively 4 (7%)	Negatively 1 (2%)	There are both pros and cons 52 (91%)
2	What is the legal force of the ECHR judgments?	The higher legal force in comparison with the decisions of the Russian courts 36 (63%)	According to the legal force below the decrees of the courts of the Russian Federation 4 (7%)	Their legal nature and legal force in the Russian Federation remain unclear 17 (30%)
3	How do you assess the consequences of the impact of ECHR judgments on the development of the law of the Russian Federation?	Only positively 26 (46%)	Only negatively 1 (1%)	There are both pros and cons 30 (53%)
4	Is it necessary to create an official website in the Russian Federation containing official translations of all ECHR judgments?	Yes, there is such a need (easy to search and apply) 54 (95%)	There is no such necessity 0 (0%)	It is necessary, but premature (for financial, organizational, other reasons) 3 (5%)
5	Is it necessary to borrow foreign models, mechanisms and procedures in Russia?	Yes, if this increases the effectiveness of the protection of rights 27 (47%)	No, there is always a national equivalent 9 (16%)	There is enough borrowed models in the law of the Russian Federation and additional copying is inexpedient 21 (37%)

Note. Data are calculated by summing up the answers for each of the proposed options; the numeric values are converted to percentages.

the results obtained are of great scientific and practical interest, since they reflect the opinion of the population about the impact of the ECHR acts and level out some "euphoria" about the absolute positive impact of these supra-state acts on Russian legislation and practice. The authors of this article give some explanations and comments after the proposed answers with a view to concretizing and legal argumentation of the proposed thesis.

The respondents indicate as drawbacks:

1. a large number of applications of Russian citizens to the ECHR (this fact is confirmed by statistical data [13]), which is due to a greater awareness of the public about the activities of the ECHR, the accessibility of the procedure for applying to the Court, as well as the successful consideration of complaints from fellow citizens in similar cases.

TABLE 4: The results of the questioning of entrepreneurs (the number of respondents,% of the number of respondents).

№	Questionnaire question	The answer options		
		Option A.	Option B.	Option C.
1	How do you assess the consequences of the processes of globalization and integration?	Only positively 4 (6%)	Only negatively 2 (6%)	There are both pros and cons 60 (91%)
2	Are you familiar with the activities of the ECHR and its decisions?	Use and apply often 2 (3%)	Never heard or know very little 12 (18%)	I have some information 52 (79%)
3	What is the source of information about the activities of the ECHR?	Media 26 (39%)	Internet 34 (52%)	Reference and legal systems 6 (9%)
4	Is it necessary to borrow foreign models, mechanisms and procedures in Russia?	Yes 8 (12%)	No 2 (3%)	Yes, but taking into account the adaptation to national characteristics 56 (85%)

Note. Data are calculated by summing up the answers for each of the proposed options; the numeric values are converted to percentages.

However, this consequence can be viewed from two sides: if it is a question about the state, its international image (status), then a large number of citizens' complaints to the ECHR undermine its authority and testifies that the state does not cope with the creation of effective protection of violated rights, observance of universally recognized principles and norms, which is undeniably assessed as a drawback. If this consequence is considered from the standpoint of individual citizens, then the possibility of applying to the ECHR is a way to restore the violated rights and to obtain a fair trial, which has only a positive effect;

2. the additional costs of the RF for compensation for the decisions of the Court (a separate line covers the costs of compensation payments under the ECHR decisions in the federal budget for the relevant calendar year [7]). For example, in the case of Medvedev vs. Russia, the ECHR, in its judgment dd. 13.06.2016, found a violation of the norms of the Convention, which resulted in the unlawful deprivation of the applicant's ownership of an apartment purchased as a bona fide purchaser, which was subsequently withdrawn on the basis of a court decision in favor of the Moscow Department in the applicant's favor, 9,000 euros were awarded in respect of non-pecuniary damage and 3,200 euros in respect of costs and expenses. [11] In another judgement in the case Juraev vs. Russia dd. 25.04.2013, the ECHR found the state guilty of violating the requirements of Art. 3 of the Convention with respect

to the authorities' failure to protect the applicant against the real and immediate threat of torture and ill-treatment by preventing him from being forcibly transferred from Moscow to Tajikistan, the lack of an effective investigation into the incident, the involvement of State agents in the operation, and awarded the applicant EUR 30,000 compensation for non-pecuniary damage and EUR 5,920 in respect of costs and expenses [12];

3. increasing the burden on the legislator to bring the norms of Russian law in line with the norms of the Convention (for example, the Civil Procedure Code of the Russian Federation (hereinafter - the Code of Civil Procedure of the Russian Federation) [1], which, taking into account the decisions of the ECHR, was repeatedly amended, revision of judicial acts, introduction of the institution of compensation for violations of the terms of consideration and execution of judicial acts);
4. the complexity of the hierarchy of judicial acts of national and international courts (there is no law "On normative legal acts" in Russia, the legal status of acts of the ECHR is not clearly defined, which causes difficulties in their correlation with domestic judicial acts and gives rise to practical problems);
5. law enforcement problems (they are caused by the uncertainty of the legal status of the ECHR acts, the lack of a methodology for application and an effective mechanism for the implementation of these acts. The first steps were taken by the Plenum of the Supreme Court of the Russian Federation in Resolution No. 21 of June 27, 2013 [6], but not all problems were eliminated. There is no special law on the enforcement of ECHR acts in Russia. The execution is carried out according to the general rules fixed by the Federal Law "On Enforcement Proceedings" [9], taking into account the changes established by the Decree of the Constitutional Court of the Russian Federation of January 19, 2017 [10]).

The problems of application are due to the complexity of Russian law's perception of the case law of the ECHR (the Russian legal family was formed on the basis of civil law, where the main source is the normative act, and judicial decisions are law enforcement, can not replace the law. Obviously, it requires the transformation of key components for the elements of common law (Anglo-Saxon legal family) to intrench and begin to function in the Russian legal field: the concept of law, the structure of legislation, the legal awareness of judges.

At the same time, 72% of the judges, 47% of the students stressed the need to borrow foreign models in order to increase the guarantees of protection of rights (see Tables 1 to 3). 97% of entrepreneurs also noted the need to use foreign mechanisms, and

the majority (85%) stressed the possibility of such reception taking into account the adaptation to national peculiarities (see Table 4).

4. The Legal Status of ECHR Acts

This international treaty and acts of the ECHR have become a catalyst for the renewal of all Russian legislation since the ratification of the Convention [17] and have an impact on various areas of national law, including the sector of the procedural branches. The perception of the legal positions expressed in the judgments of the ECHR at the national level is realized in two forms: 1) *direct form* by transforming the current legislation in cases of indication of specific violations of the norms of the Convention (measures of general nature); 2) *mediated form* through the perception of foreign mechanisms that contribute to the effective administration of justice (reception).

Without getting into a deep scientific discussion on the legal status of the ECHR acts in the Russian legal system, which is described in detail in scientific works and publications [16, p. 63 - 106; 20, p. 16 - 23; 21, p. 161 - 196], it should be emphasized that in the above decree of the Plenum of the Armed Forces of the Russian Federation there is only an indication that the acts of the Court containing its legal position on the interpretation of the norms of the Convention rendered against Russia *are mandatory* for application by the courts of the Russian Federation (*mandatory regime of application*); Acts of the Court containing a legal position taken against other states are taken into account by the judges of the Russian Federation provided that the circumstances of the case under consideration are similar, i.e. *can* be used when considering a civil case in a national court (*optional application*).

The results of the survey on the legal status of these acts are illustrative. 62% of judges point to the higher legal force of the ECHR acts as compared to the rulings of Russian courts, 38% note the unclear legal nature of these acts (see Table 1). 63% of students in the survey noted that the judgments of the ECHR have the highest legal force in comparison with the rulings of the Russian courts; 7% - put them below the national judicial acts and 30% - underscored their unclear legal nature and legal force (see Table 3). Answering the question about the activities of the ECHR, 18% of entrepreneurs have never heard of its activities or know very little, 79% - are aware of the activities of the court, have some information and only 2% are often interested in the activities of the ECHR, use, analyze the acts adopted by the Court (see Table 4).

5. Problems of the Unification of Legislation

Since the ratification of the Convention, civil procedural legislation has been repeatedly changed by the introduction of new institutions, for example, mediation (FL "On the Alternative Procedure for the Settlement of Disputes with the Participation of an Intermediary (Mediation Procedure)" dd. 27.07.2010 [8]), existing mechanisms were adjusted. The regular modernization of the legislation was implemented by the Federal Law No. 353-FL dd. 09.12.2010 "On Amendments to the Code of Civil Procedure of the Russian Federation" [4], which entered into force on 01.01.2012, which already makes it possible to judge the ineffectiveness of its individual provisions. These innovations were reasonably criticized by leading Russian scientists at the development stage of the bill [22]. The presence of problems indicates the incompleteness of the unification process, its private (fragmentary) character. The next step in transforming the procedural legislation will be the adoption of a single CCP of the Russian Federation [3], the project of which is approved by the State Duma's Committee, is posted on the Internet and databases for public comment. We expect that this code will be effective in protecting violated rights, based on the rule of law, minimizes discrepancies, unifies procedural norms, and does not become yet another codified act containing new but inefficient norms.

6. Problems of Accessibility of ECHR Acts

The ECHR's activities should become more open for Russian citizens with unhindered access to the necessary information and acts. The main source of information on the activities of the ECHR are: Mass media (39% of entrepreneurs), Internet network (52% of entrepreneurs) and a small percentage are assigned to the search systems Consultant Plus and Garant (see Table 4). Acts are placed in these databases marked "unofficial translation", which contradicts the requirements of the Constitution of the Russian Federation. Acts submitted to other states are posted only in the original language. The solution of the information-retrieval problem consists in the creation of an accessible website containing a full bank of official translations of the ECHR acts prepared by the Office of the Commissioner of the Russian Federation under the ECHR.

7. Problems of Application of the ECHR Acts

There are no clear recommendations on how the courts use the ECHR acts. Decision of the Plenum of the Armed Forces of the Russian Federation from June 27, 2013 No.

21 did not fully resolve this issue. For example, is the court obliged to acquaint the participants of the process with the applicable text of the ECHR ruling? Who guarantees and ensures the authenticity and correspondence of the translation of the text to its original? This thesis is confirmed by the results of the survey: only 12% of judges often apply ECHR acts in their activities, 56% - sometimes, 32% - never. The main reasons for this "modest" application of the ECHR were: absence of explanations of the Plenum of the Armed Forces of the Russian Federation on the application procedure (34%), there is no methodology for their use (26%), a small number of official translations and a complete database (40%) (see Table 1).

The results of the survey of lawyers showed that a significant obstacle to the application of ECHR acts is the established judicial practice in the region: negative, skeptical attitude, ignoring of these acts by judges when referring to them by the participants in the process; the prerogative of the directions of the higher court. As a consequence, 38% of lawyers never use these acts in their activities, 58% use it sometimes and only 4% - use it often (see Table 2).

8. Conclusions and Recommendations

The process of bringing national legislation in line with the norms of the Convention has not been completed. The following measures are necessary in the field of law in the future: modernization of the national legislative framework, increasing the effectiveness of protection of violated rights, in the sphere of legal awareness: legal education, raising the legal culture of the population. In parallel, it is necessary to combat legal nihilism, the arbitrariness of certain officials and state agents.

All measures to create conditions for harmonization and harmonious legal integration can be divided into organizational and general cultural. **Organizational conditions.** It is advisable within the organizational group: 1) The Supreme Court of the Russian Federation shall create a website for official texts of the ECHR judgments; 2) The Ministry of Justice of the Russian Federation shall organize a center that translates and places ECHR acts on the relevant website; 3) Plenum of the RF Supreme Court shall develop and approve the methodology for the application of ECHR acts when judges consider specific cases; 4) The State Duma of the Russian Federation shall pay attention to the needs of modern society and adopt the Federal Law "On the procedure for the execution of judgments of the ECHR in the Russian Federation". Scientists and practicing lawyers insist on such a law [21, p. 272 - 274; 18]. T. V. Solovyova additionally proposes to establish the personal responsibility of officials of all branches of government (disciplinary,

administrative, property and criminal) that impede the implementation of the ECHR judgments [21, p. 291]; 5) The Government of the Russian Federation shall include a special section on specific measures in the Target Program "Development of the judicial system of the Russian Federation" to bring legislation into line with the norms of the Convention.

The modernization of the legislation was initiated by introducing the review of judicial decisions on new circumstances into the procedural codes of the institute - the adoption of a decision of the ECHR, which found a breach of the Convention provisions in respect of the applicant (Chapter 42 of the Code of Civil Procedure of the Russian Federation, Chapter 37 of the APC RF). This line is continued by the Federal Law "On compensation for violation of the right to legal proceedings within a reasonable time or the right to enforce a judicial act within a reasonable time" [5], which regulates the award of compensation in the event of failure or violation of the terms of execution of the court decision, including acts of the ECHR. However, this is not enough, as evidenced by the results of legal monitoring and inventory of procedural legislation [15, p. 48 - 80].

8.1. General cultural conditions

General cultural measures are especially valuable, the positive effect of which is found later, but is significant: 1) legal education in the conditions of the principles of the rule of law and legislature. This implies the introduction of training specialists and bachelors of various disciplines by the Ministry of Education and Science of the Russian Federation in the general educational school curricula and standards that contain information on universally recognized principles and norms of law, standards of administration of justice, the activities of the ECHR; 2) posting on official websites of state services, state bodies of various levels of information on the activities of the ECHR; 3) popularization of information on the activities of the ECHR in the media, on television, print media and information resources through the state support of these information channels and programs; 4) instilling an awareness of the fact that integration processes are natural and inevitable in the citizens of Russia. This requires modern people to avoid the fear of perceiving the valuable and positive in the field of law, which has been gained by the practice of neighboring states and can be perceived by Russian reality.

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