PROBLEM OF COLLISIONS IN DECISIONS OF THE EUROPEAN COURT OF HUMAN RIGHTS AND CONSTITUTIONAL COURT OF THE RUSSIAN FEDERATION

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Abstract

As the title implies the article describes the problem of collisions in decisions of the European Court of Human Rights and Constitutional Court of the Russian Federation. The main idea of the article is problem for constitutional court practice of our state. Conflict situations contains in the right of the Russian Federation not so much, but even in case of their emergence of KS of Russia has found way out of this situation. This problem concerns not only the Russian Federation, but also meets on the example of many other states. In general, activity of ECHR rather well affects policy and the legislation of the Russian Federation. Achievement of goal, providing legitimate interests, the rights and freedoms of the person and citizen, is possible only in case of individual approach to each case.

Keywords: European Court of Human Rights, Constitutional Court, Russian Federation, citizens, the right.

According to the Federal law (further - Federal Law) of March 30, 1998 No. 54-FZ "About ratification of the Convention on human rights protection and fundamental freedoms and Protocols to it" the Russian Federation (further - the Russian Federation) ratified the Convention on human rights protection and fundamental freedoms, and also Protocols which have been adopted to it. Ratification, proceeding from international law, this approval of the international treaty the supreme body of the government or the head of state. Thus, the Russian Federation has to observe provisions of the listed above international acts. For control of observance of provisions, and also for pronouncement of decisions concerning the state violator, the European Court of Human Rights has been created (further - ECHR).

Not so long ago on the example of the Russian Federation there was such problem as collision of Resolutions KS Russian Federation and ECHR. This problem is very actual for constitutional court practice of our state. Proceeding from it, there is question, responsibility of KS Russian Federation for non-compliance with the international obligations is how great, including, decisions of ECHR, it has to execute them or can ignore Resolutions? This problem concerns not only the Russian Federation, but also meets on the example of many other states. So, for example, in Italy the Constitutional court has noted that in case of discrepancy of the decision of ECHR of the Constitution of this state, the preference is given to the Constitution. That, is decisions of the Constitutional court of Italy decisions of ECHR are put

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above, than. Many countries of Europe adhere to the same position.

If to consider that the European Convention on human rights is component of the Russian legal system, decisions of ECHR in the territory of the Russian Federation can not be executed. It occurs in case of implementation of special measures and change of the current legislation of Russia not to break firmness of the Constitution. According to international law, KS has to develop and realise various ways of embodiment of the decision of ECHR in reality. Also, proceeding from the Resolution KS Russian Federation of December 6, 2013 No. 27-P "On the case of check of constitutionality of provisions of article 11 and points 3 and 4 of part of the fourth article 392 of the Code of Civil Procedure of the Russian Federation in connection with inquiry of praesidium of the Leningrad district military court" KS allows possibility of correction of its position under the influence of decisions of ECHR. There is it in case of the repeated appeal to the Constitutional Court. This resolution is directed on the solution of conflict situations between KS Russian Federation and ECHR.

Striking example of collision of solutions of KS Russian Federation And ECHR is sensational case of Markin. Its essence is as follows, at the captain of the Russian army after divorce with the wife, on hands there was newborn child. Proceeding from it, the captain has tried to go on child care leave, but command of part has refused to it it. Then, Markin has appealed to military courts which have made the decision on refusal to the applicant in providing holiday, having referred to that such leave is granted only to the female military personnel. Konstantin Markin has considered that its rights are violated and has addressed in KS Russian Federation, after all provisions Federal Law "About Welfare Payments to the Citizens Having Children" and Federal Law "About the Status of the Military Personnel" contradict the main act of the Russian Federation - Constitutions. It is possible to tell that here discrimination on floor - to the military personnel is shown - men cannot combine education of the child and service. How observance of the basic constitutional principles, such as, the right for care of children and their education, equality of citizens irrespective of their race, nationality, floor, etc.? Despite it, KS Russian Federation has counted in a different way and has passed the decision which is not supporting Konstantin Markin. After all, Markin is on service under the contract, that is has voluntary gone to it so that to solve this problem, Markin needed to resign from himself all authority. The leave granted to women has been justified at the expense of important social role of women in society and limited access them to military service.

Konstantin Markin has addressed to ECHR. The last has seen in actions of the Russian Federation violation of fundamental freedoms, according to Art. 8 and Art. 14 of the Convention. Having addressed in KS Russian Federation repeatedly, Markin has received the positive decision and compensation, monthly allowances and other monetary payments have been paid to it. But, during the this case there was collision between decisions of ECHR and KS Russian Federation. On the theory of problems in the field should not be, after all both judicial bodies work by one principle enshrined in the Convention "coinciding catalogue of basic rights and freedoms". Finally, the final decision all the same remained for KS Russian Federation.

Such situations as that that is described above, it is not a lot of. But, nevertheless, it is worth understanding in what the reasons of emergence of
such collisions consist. Inconsistent legal views and positions of ECHR and KS Russian Federation are the main reason. Also there is incorrect interpretation of provisions of the Convention and Protocols which supplement it and broaden the sphere of its action. Overall objective of activity of two considered instances is ensuring the rights and freedoms of the person and citizen. In the course of achievement of this purpose, it is impossible to use forms of pressure upon the states by no means, and also to interfere in the sphere of the national sovereignty. In general, removal of ECHR of the decision that the respondent state needs to make changes to its current legislation, is violation of the sovereignty. In literature it was noted that many states expressed the commitment to natural human rights and on this basis participated in development and ratification of the adopted agreements. However as soon as case reached the specification of the conventional rights and specification of norms for their real embodiment at the national level, there were problems with bringing these norms to practice of national and legal life. The similar problem has arisen and in legal practice of Russia on the example of Markin.

To resolve the arisen collision, it is necessary to carry out the analysis of problem of expediency of loan of foreign legal institutes, and also separate establishments and their introduction to the Russian reality. After all, each state is in own way unique, and it is possible that those principles and institutes which work in many countries of Europe, will not act so effectively on the territory of the Russian Federation. For certain, for this reason, the primacy of the resolution of ECHR will not be able to provide the Russian Federation, after all values and representations are various, and it leads to divergence in interpretation of separate provisions of the Convention.

On the above example it is possible to tell that pronouncement of the decision on refusal in providing holiday to Markin first of all is connected with specificity of military service. After all execution of military service provides restriction of the separate rights and freedoms of the citizen. The serviceman has to carry out constantly the conscription to provide strategic objectives and the vital interests of homeland security. The reliable legal base which will become basis for strengthening of defence capability of the country and safety of citizens is necessary for exception of violations in functioning of the relations in the military sphere. In case of modification of the Russian legislation and distribution of its provisions on all military personnel as has offered ECHR, it is possible to present, what harm it will do to interests of the Russian Federation. In this case it is possible to speak about threat to interests of homeland security of the Russian Federation.

For the solution of this problem, KS Russian Federation the Resolution of July 14, 2015 No. 21-P/2015 "On the case of check of constitutionality of provisions of article 1 of the Federal law "About ratification of the Convention on human rights protection and fundamental freedoms and Protocols to it", points 1 and 2 of article 32 of the Federal law "About international treaties of the Russian Federation", parts of the first and fourth article 11, point of 4 parts of the fourth article 392 of the Code of Civil Procedure of the Russian Federation, parts 1 and 4 of article 13, point 4 of part 3 of article 311 of the Arbitration procedural 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 of 2 parts of the fourth article 413 of the Code of penal procedure of the Russian Federation in connection
with inquiry of group of deputies of the State Duma. Many jurists have misinterpreted this Resolution. Its essence consists that when law enforcement officials who execute the decision of ECHR, see that in it there are certain discrepancies of the Constitution, they have to address in KS Russian Federation. Thus, it is checked, whether there correspond legislative norms in which the European Court finds violations of the rights and freedoms provided by the Convention, the Russian Constitution. Such procedure is initial. The following procedure, this address with the petition for interpretation of certain constitutional norm from public authorities in KS Russian Federation. It occurs in case the Russian President or the Government of the Russian Federation cannot independently estimate, whether the Constitution allows implementation of the decision of ECHR or nevertheless not. 

Thus, KS Russian Federation urges to observe the decisions passed to ECHR, it only shows algorithm of actions in case of legal collision. Openly not to execute the decision of ECHR of KS Russian Federation speaks only when there is new treatment of the Convention which is not existing at that time when Russia accepted it. Conflict situations contains in the right of the Russian Federation not so much, but even in case of their emergence of KS of Russia has found way out of this situation. In general, activity of ECHR rather well affects policy and the legislation of the Russian Federation. Achievement of goal, providing legitimate interests, the rights and freedoms of the person and citizen, is possible only in case of individual approach to each case.

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