Россия и Европейская конвенция по правам человека: 20 лет вместе

20 дел, изменивших российскую правовую систему

ПРЕЦЕДЕНТЫ ЕВРОПЕЙСКОГО СУДА ПО ПРАВАМ ЧЕЛОВЕКА
Специальный выпуск 5'2018

CASE-LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS
Special issue 5'2018

Russia and the European Convention on Human Rights: 20 years together

20 cases that have changed the Russian legal system

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20 cases that have the Russian

"As follows from the provisions of Article 46 of the Convention, Article 1 of the Federal Law of March 30, 1998, No. 54-FZ On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols thereto, the legal positions of the European Court of Human Rights contained in the final judgments of the Court delivered in respect of the Russian Federation shall be mandatory for the courts..."

Ruling of the Plenum of the Supreme Court of the Russian Federation of 27 June 2013, No. 21

Each anniversary is an occasion for taking stock and thinking about the future. According to standards of modern history, 20 years is not so short a time. The structural changes that have taken place in Russian law during this period are so important that it is impossible to imagine today's Russia and the life of its citizens without them. Many of these changes are the result of Russia's

in the ECtHR changed legal system

"Russia acceded to the Convention for the Protection of Human Rights and Fundamental Freedoms striving to ensure additional guarantees for the implementation of the fundamental provision on the human rights and freedoms set in Article 2 of the Constitution of the Russian Federation as the highest value in a democratic state abiding by the rule of law".

Judgment of the Constitutional Court of the Russian Federation of 14 July 2015, No. 21-P

participation in the Pan-European legal space on the basis of numerous conventions of the Council of Europe.

The past 20 years were replete with intensive daily communication between Russia and the Council of Europe, the essential part of which constituted proceedings before the European Court of Human Rights. Several thousands of judgments

have been delivered, and many of them have not only brought redress to Russian citizens, but have also resulted in structural changes in Russian law.

These cases before the European Court of Human Rights have not been "lost" by Russia, as is often formally stated, but the latter has "won" them, restoring justice vis-à-vis its citizens and strengthening its own legal system.

In fact, this was the main goal of Russia's accession to the unique Pan-European organisation whose main aim is to reach greater unity between its Member States and to support their economic and social progress.

Moreover, changes in the Russian legal system in response to the judgments of the European Court were also followed by other transformations resulting from Russia's accession to numerous conventions of the Council of Europe. Having become, within the span of 20 years, a full-fledged participant of over 60 conventions, Russia has done enormous work to harmonise its legal system with the European legal framework.

Practically all of the Russian ministries and agencies have been involved in this work, and most of

them continue to show their interest in close cooperation with the Council of Europe.

Only last year, Russia acceded to several further treaties, thus having demonstrated its readiness to promote legal integration and cooperation notwithstanding the unprecedented political issues arising from the current situation in the Parliamentary Assembly of the Council of Europe.

The 20th anniversary of the Russian Federation's accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms prompted us to select 20 milestone cases in the European Court of Human Rights that have changed the Russian legal system.

Though not claiming to be an exhaustive overview, this special publication is just a brief illustration of how daily cooperation within the Council of Europe is contributing to the strengthening of the Russian legal system and, hence, of the Russian State as a whole.

This publication will be supplemented by dissemination of further information and analytical materials describing in greater detail the essence of the changes that have occurred.

Judgments of the European Court of Human Rights in the cases of

Burdov v. Russia,
7 May 2002,
application no. 59498/00

Burdov v. Russia (no. 2),
15 January 2009,
application no. 33509/04

Gerasimov and Others v. Russia,
1 July 2014,
applications nos. 29920/05, 353/06, 18876/10, 61186/10, 21176/11, 36112/11, 36426/11, 40841/11, 45381/11, 55929/11 and 60822/11

AUTHORITY OF THE JUDICIARY: STATE BODIES' COMPLIANCE WITH JUDICIAL DECISIONS

Since 2002, the European Court has found multiple violations of the Convention by Russia in connection with failure to enforce national court judgments by state authorities. Judicial decisions awarding social payments to the disabled and pensioners, granting apartments to military servicemen and providing housing services remained systematically unenforced. In some applications, letters from State officials were appended which openly expressed disagreement with the decisions of the Russian courts and the refusal to enforce such decisions.

Two ECtHR judgments in the *Burdov* case, together with consonant rulings of the Russian Constitutional and Supreme Courts, have resulted in large-scale reforms which strengthened the authority of judicial power in Russia. In particular, the laws adopted in 2010 have set up domestic remedies which allowed most citizens suffering from such violations to obtain redress. The additional legislative reform enacted in 2016 in response to the pilot judgment of the ECtHR in the *Gerasimov* case has almost fully resolved the above-mentioned problem.

These measures have resulted in curtailing the flow of thousands of non-enforcement complaints to the Strasburg Court as the Russian legal system has now developed the necessary tools to grant effective redress to all individuals concerned at the national level.

Judgment of the European Court of Human Rights in the case of

Ryabykh v. Russia,
24 July 2003,
application no. 52854/99

ENSURING LEGAL CERTAINTY: REFORM OF JUDICIAL REVIEW PROCEDURE

Starting with 2003, the ECtHR found numerous violations of the principle of legal certainty, which is an essential component of the right to a fair trial. The judgments that have legally entered into force were being altered or repealed by way of supervisory review without any time-limit. Neither individuals nor legal entities could therefore rely upon domestic judgments as the final result of dispute resolution.

The ECtHR judgments have become a key factor in the reform of the Russian judicial procedure, including the supervisory review procedure. Following the European Court, the Constitutional and Supreme Courts of Russia emphasised the necessity to observe the principle of legal certainty in the light of the Convention. Subsequently, essential amendments were incorporated in the Code of Civil Procedure in 2003, 2008 and 2012.

Today, a court judgment that has entered into force may be reviewed only within a certain period of time, and only the parties to the case may initiate the review after the exhaustion of regular means of appeal. The implementation of the judgments of the ECtHR in the above cases has increased the predictability of the Russian adjudication, thereby enhancing the level of trust in the judicial system.

Judgment of the European Court of Human Rights in the case of

Bednov v. Russia,
1 June 2006,
application no. 21153/02

DETENTION WITHOUT ARBITRARINESS

The European Court of Human Rights found violations of the Convention on account of detention on remand without a court decision or on the basis of a decision which lacked motivation.

The Russian authorities took measures to prevent new similar violations of the Convention. Amendments relating to the procedure and time-limits for detention were introduced into the Code of Criminal Procedure. The Constitutional Court provided clarifications for the application of the new norms.

Now the detention on remand shall only be ordered or extended by a motivated court decision. Such decisions shall not be taken retroactively, and shall not be delivered without specification of the term or for an indefinite period of time. A hearing on the extension of detention on remand is now conducted with the participation of the person concerned and his or her defense lawyer.

As a result, Russian courts are justifying the lawfulness and the length of detention on remand with greater precision, while the number of alternative measures of restraint is steadily growing.

This contributes to the protection of one of the fundamental rights set forth both in the European Convention and the Constitution of the Russian Federation, namely the right to liberty and security.

Judgments of the European Court of Human Rights in the cases of

Kalashnikov v. Russia, 15 July 2002, application no. 47095/99

Ananiev and Others v. Russia, 10 January 2012, applications nos. 42525/07 and 60800/08

CREATING DECENT CONDITIONS OF DETENTION

The large-scale reform of the penitentiary system and the success that has been achieved in this area are inextricably linked with Russia's membership in the Council of Europe and numerous judgments of the ECtHR relating both to the length and conditions of detention. Acute overcrowding and lack of sleeping places in cells, absence of natural lighting and an insanitary environment have become the main reason for the ECtHR to frequently find inhuman treatment in violation of Article 3 of the Convention.

Since the first judgment of the Court in 2002, unprecedented measures have been taken to create decent conditions in pretrial detention facilities. In close contact with the Council of Europe, the Russian laws were considerably amended, including the Criminal Code, Code of Criminal Procedure and the Penitentiary Code.

In the pilot judgment of 2012 in the case of *Ananyiev and Others v. Russia,* the ECtHR recognised the positive results of the reforms that had been carried out and emphasised the necessity to set up domestic remedies to resolve complaints against poor conditions of detention within the Russian legal system. The pilot judgment was not appealed against to the Grand Chamber, thus becoming the most important reference for further improvement of the legislation and law-enforcement practices.

Judgment of the European Court of Human Rights in the case of

Zadumov v. Russia,
12 December 2017,
application no. 2257/12

FAIR TRIAL AS A WAY TO ENSURE CONFIDENCE IN JUSTICE: NEW RIGHTS OF THE PARTIES

In its judgments, the European Court of Human Rights repeatedly noted such procedural issues as absence of the defendant and the defense lawyer at the appeal (cassation) instance, the absence of the defense lawyer during the first interrogation of the suspect by the police, failure to appoint the defense lawyer in the appeal (cassation) instance.

Already back in 2003, the ECtHR case-law prompted the introduction of new procedural guarantees relating to the disclosure of evidence by witnesses of the prosecution who are absent at the court hearing.

In 2016, additional amendments were incorporated into the Code of Criminal Procedure of the Russian Federation. The new legislation was followed by clarifications of the Supreme and Constitutional Courts on the disclosure of evidence given in pre-trial investigation. They also clarified that courts should base their decisions on evidence that has been directly examined in the course of judicial proceedings.

As a result, the Russian courts pay greater attention to the rights of the defendants and take measures to ensure fair trial in the absence of the possibility to interview a witness in the court room.

Judgment of the European Court of Human Rights in the case of

Shtukaturov v. Russia, 27 March 2008, application no. 44009/05

OBSERVANCE OF RIGHTS WHEN PROVIDING PSYCHIATRIC ASSISTANCE AND RIGHTS OF LEGALLY INCAPACITATED PERSONS

The European Court found violations of the Convention due to the failure to observe the rights of the applicants when placed against their will in a psychiatric hospital and due to the absence of an opportunity to appeal this involuntary placement.

Under the Russian laws then in force, from the moment when an individual was deemed incapable he or she had no procedural rights, such as the right to appeal the court decision declaring him or her incapable. All the rights were granted to the guardian, who often was the psychiatric hospital itself. As a result, it was possible to place an individual in a psychiatric hospital for involuntary treatment without oversight on the part of an independent body, such as the court.

In response to the ECtHR judgment, the Code of Civil Procedure and the laws on psychiatric assistance were amended. Today, an incapacitated individual can appeal such a judgment and enjoys other procedural rights. An individual can only be placed in a psychiatric hospital upon that person's consent and, in the absence thereof, upon a motivated court judgment to be delivered after hearing the person concerned.

Judgment of the European Court of Human Rights in the case of

Kormacheva v. Russia,
29 January 2004,
application no. 53084/99

COMPENSATION FOR THE EXCESSIVE LENGTH OF JUDICIAL PROCEEDINGS

The ECtHR repeatedly found violations of the right to a hearing within a reasonable time and lack of effective remedy to protect this right at the domestic level.

In conformity with the judgments of the European Court of Human Rights, Russia amended its laws with a view to reducing the length of civil and criminal proceedings.

Amendments were made to the Codes of Civil and Criminal Procedure in order to prevent inactivity of judicial bodies. The Judicial Department of the Supreme Court issued an instruction to improve the procedure of notifying the parties. The number of judges was increased to deal with the issue of excessive work load on judges. The Ruling of the Plenum of the Supreme Court provided explicit clarifications to all courts in the light of the case-law of the European Court, the Constitutional Court, and also in connection with the adoption of the new Code of Administrative Procedure. Lastly, in 2010 Russia introduced for the first time the right to compensation for excessive length of judicial proceedings, which was recognized by the ECtHR as an effective domestic remedy.

As the result, the flow of applications to the European Court relating to this issue has virtually stopped.

Judgment of the European Court of Human Rights in the case of

Posokhov v. Russia, 4 March 2003, application no. 63486/00

REDRESS FOR INFRINGED RIGHTS: REVIEW OF DOMESTIC COURT DECISIONS IN RESPONSE TO THE ECtHR FINDINGS

Some of the Convention's violations established by the ECtHR compel the respondent State to restore the applicant's rights through reopening of proceedings before national courts and review of their final judgments. Accordingly, all Member States of the Council of Europe provide for such procedures in their legislation.

For this purpose, Russia amended the provisions of the Codes of Criminal and Civil Procedure which concern the reopening of proceedings on account of new or newly discovered circumstances: the violation of the European Convention found by the ECtHR was added to the list of grounds for reopening of proceedings.

The above changes provide for the possibility of reviewing court decisions in order to remedy the negative consequences of the violation of the Convention for the applicant. The Supreme Court has repeatedly resorted to this provision in practice: as of today, the Chairman of the Supreme Court of Russia lodged 562 applications for review of judicial decisions with regard to 641 individuals, thus responding to the ECtHR judgments in the cases concerned.

Besides the review of court decisions, the Russian authorities took other measures to remedy violations of the Convention, such as the return of the child to the parent, issuance of residence permits to foreign citizens if they have personal or family ties in the country, etc.

Judgment of the European Court of Human Rights in the case of

Alim v. Russia,
27 September 2011,
application no. 39417/07

TERMINATION OF AUTOMATIC DEPORTATION OF ALIENS IN CASE OF VIOLATION OF THE IMMIGRATION RULES

In the event of minor violations of the immigration rules, the Russian law used to command automatic deportation of foreigners, even those who resided for a long time and had families in Russia, had an employment and paid taxes in the country.

The European Court of Human Rights found a violation of the right to private and family life given that the family status of the foreigner was not taken into account in the event of deportation.

The Constitutional Court of the Russian Federation voiced a similar position, noting that this restriction could not be enforced automatically: the courts should not be limited by formal grounds for the application of law, but should hear and evaluate all the facts, including the family status.

As a result, in 2014 alone, in more than 4,000 cases of this kind the Russian courts did not order deportation but applied alternative administrative sanctions. In so doing, the courts frequently refer directly to Article 8 of the Convention, giving priority to the international treaty over the formal requirements of Russian law.

Judgment of the European Court of Human Rights in the case of

Kiyutin v. Russia,
10 March 2011,
application no. 2700/10

TERMINATION OF AUTOMATIC DEPORTATION OF HIV-POSITIVE FOREIGN CITIZENS

Pursuant to the former legislation, foreign citizens who were HIV-positive would be automatically deported from the territory of the Russian Federation irrespective of their personal and family ties in Russia. In 2011, the European Court found a violation of the Convention on account of discrimination on the grounds of health status.

Following the judgment of the European Court, the Constitutional Court of the Russian Federation declared the relevant provisions of Russian law to be unconstitutional and ordered the legislative authorities to amend them. In addition, the judicial and executive authorities were compelled to resolve the issue of residence of such individuals, taking account of their private circumstances.

Legal amendments adopted in late 2015 improved the situation. Presently, when such a case is considered, the authorities shall take into account the registered marriage with a Russian citizen or the existence of children who are citizens of Russia. In conformity with the Constitutional Court's judgment, the legislator shall specify the grounds and procedures for decisions relating to the rights of HIV-positive foreigners or stateless persons to stay and reside in Russia.

Judgments of the European Court of Human Rights in the cases of

Garabayev v. Russia, 7 June 2007, application no. 38411/02

Savriddin Dzhurayev v. Russia, 25 April 2013, application no. 71386/10

PROTECTION AGAINST ARBITRARINESS DURING EXTRADITION

In a number of Russian cases, the European Court found violations of the Convention in the course of extradition at the request of foreign States. The rights of individuals were violated as they were detained without a court order, deprived of a possibility to appeal against the detention orders, or when the extradition to a foreign state would subject them to a real risk of inhuman or degrading treatment. The Code of Criminal Procedure did not contain special provisions governing the selection of restrictive measures with regard to persons subject to extradition. Nor did the Code contain any indications that the general provisions regulating the detention on demand should be expanded to the extradition procedures. Moreover, in certain cases, egregious violations of the Convention were found due to the fact that foreign citizens were transferred to law enforcement agencies of other States illegally in circumvention of the Russian legal procedures.

The Ruling of the Plenum of the Russian Supreme Court provided comprehensive clarifications with a view to resolving issues identified by the European Court in cases relating to extradition. The ECtHR position was also taken into account in the rulings of the Constitutional Court. Hence, the Russian law enforcement practice in such cases has changed considerably, which has led to a decrease of findings of such violations by the European Court. Complaints about illegal renditions have also ceased.

Judgment of the European Court of Human Rights in the case of

Gladysheva v. Russia, 6 December 2011, application no. 7097/10

PROTECTION OF THE PROPERTY RIGHT OF GOOD FAITH BUYERS

A good faith (*bona fide*) buyer of a flat was compelled to return it to the authorities, if any of the previous owners had acquired that flat in violation of the law. The European Court found a violation of the property right, indicating that good faith buyers should not be held responsible for the errors of the State authorities and officials, who had confirmed the lawfulness of real estate transactions entered into by the previous owners.

In the light of ECtHR judgment, the Constitutional Court held that when there is a great number of controlling and authorisation bodies and registration acts, the buyer of the flat should not be subjected to the risk of deprivation of his or her property right on account of shortcomings that should have been remedied through the procedures under the State's sole responsibility.

The Supreme Court also clarified in its case-law review the circumstances that must be taken into account by courts when deciding whether a person should be considered a *bona fide* buyer.

As a result of the ECtHR judgments and clarifications of the highest courts of Russia, good faith buyers have now been granted additional guarantees to protect their property rights enshrined in Protocol No. 1 to the European Convention.

Judgment of the European Court of Human Rights in the case of

Greenberg v. Russia, 21 July 2005, application no. 23472/03

FREEDOM OF EXPRESSION: PROTECTION OF VALUE JUDGMENTS IN A PUBLIC DEBATE

The European Court found a violation of the right to freedom of expression in a case where the applicant was held liable for expressing an opinion which could be neither proved, nor disproved with facts – the so called value judgment.

In the light of the ECtHR position, the Supreme Court's Ruling of 24 February 2005 clarified to all Russian courts that they had to make a distinction between a value judgment and a statement of facts.

The Supreme Court also held that the concept of defamation used by the European Court was identical to the concept of dissemination of false detrimental information as it was referred to in the Civil Code of the Russian Federation.

General measures taken by Russia in response to the ECtHR judgment were later complemented the Ruling of the Plenum of the Supreme Court of 15 July 2010 on the courts' case-law applying the Law on Mass Media.

As a result of those measures, Russian court practice has evolved towards greater respect of value judgments in public debate.

Judgment of the European Court of Human Rights in the case of

Putintseva v. Russia, 10 May 2012, application no. 33498/04

LIFE AND HEALTH OF MILITARY SERVICEMEN: NEW LEGAL SAFEGUARDS

In 2012, the European Court established liability of the Russian authorities for the death of a soldier during his military service. The Garrison and Guard Service Statute then in force in the military forces did not ensure adequate protection of the right to life enshrined in the Convention. The problem arose from shortcomings in the procedure governing the use of firearms.

After the ECtHR judgment, the President of the Russian Federation issued a Decree of 5 March 2015 enacting the Russian Armed Forces Military Police Statute. The new Statute governs the use of force and special means in respect of servicemen being held in a military detention facility. Specific provisions stipulate the obligation to use all possible means to apprehend a fugitive without using firearms. The Statute delimits the possibilities of using force without warning, and also introduces the liability for abusive use of physical force, special means, firearms, military and special equipment by the military police.

Therefore, the adoption of the new Military Police Statute has remedied structural shortcomings identified in the judgment of the European Court and has thus enhanced the safeguards for the right to life in the Russian armed forces.

Judgments of the European Court of Human Rights in the cases of

Mikheyev v. Russia, 26 January 2006, application no. 77617/01

Lyapin v. Russia, 27 July 2014, application no. 46956/09

LIABILITY AND COMPENSATION FOR ILL-TREATMENT BY LAW ENFORCEMENT OFFICIALS

The European Court repeatedly found violations of the Convention as a result of torture or ill-treatment by law enforcement officials. The ECtHR judgments revealed a wealth of legal issues which the Russian authorities still continue to work on in cooperation with the Council of Europe.

A number of measures have been taken to provide additional safeguards against ill-treatment, such as enhancing supervision by the prosecutor's office and setting up special divisions in charge of investigating cases in this area.

The Supreme Court took measures to enhance judicial supervision by issuing a case-law review that has summarised the court practice in cases relating to the use of torture by law enforcement officers, including the practice of just satisfaction awards in such cases. A reform of the judicial review of the criminal investigations has been initiated including through introduction of a new institution of investigative judges.

Moreover, permanent supervision by the internal security departments has been introduced within police in order to ensure police officers' discipline and compliance with the law.

The measures taken by the Russian authorities resulted in reducing to curve the number of complaints being lodged with the ECtHR with regard to this problem.

Judgment of the European Court of Human Rights in the case of

Vanyan v. Russia,
15 December 2004,
application no. 532/99

PROHIBITION OF CRIME PROVOCATION IN THE COURSE OF INVESTIGATIVE ACTIVITIES

The European Court found violations of the Convention in the course of operational-search activities by the law-enforcement agencies. The violations resulted from "test purchases" that were unduly carried out by undercover agents. The results of such operational-search measures were later used as a basis for criminal convictions in the absence of other proof of the applicants' guilt and without a proper hearing in court of the applicants' arguments alleging the incitement to the crime.

Following the ECtHR judgment, legal amendments were adopted which recognised entrapment as illegal and inadmissible in operational-search activity. Entrapment was defined as direct or indirect incitement or inducement that has led a person to commit illegal acts.

According to the European Court's case-law, fair trial guarantees do not allow criminal prosecution of individuals who would not have committed a crime without the intervention of operational and investigation agencies. The ECtHR judgments also require a judicial review of complaints about entrapment and effective review of operational-search activities.

As a result of the clarifications by the Russian Supreme Court, the national courts' practices on those issues continue to evolve in line with the ECtHR case-law.

20 cases in the ECtHR that have changed the Russian legal system

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RUSSIA AND THE EUROPEAN CONVENTION ON HUMAN RIGHTS: 20 YEARS TOGETHER

20 cases that have changed the Russian legal system