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EFFECTIVE PROTECTION OF HUMAN RIGHTS: LOOKING FOR SOLUTIONS

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1. Introduction

As it is commonly accepted, human rights are activities, conditions, and freedoms that all human beings are entitled to enjoy. However, only the governments are in a position to put in place the domestic laws and policies necessary for protection of human rights and for regulation of private and public practices that impact individuals' enjoyment of these rights. Therefore, nation states are considered as both guarantors and violators of human rights [1].

That is why effective protection of human rights is possible within integration of nation states' efforts and international involvement. The driving idea behind international human rights law is that it is the states that are in a position to violate individuals' freedoms. And respect for these freedoms may be hard to achieve without having international consensus and oversight.

As a result, in the post-World War II period, international consensus crystallized around the need to identify the individual rights and freedoms which all governments should respect, and to establish mechanisms for both promoting states' adherence to their human rights obligations and for addressing serious breaches. Thus, national governments cooperated in the establishment of the United Nations, the Organization of American States and the Council of Europe, each including among its purposes the advancement of human rights. So far, the European Court of Human Rights (further referred to as ECoHR), having been established within the latter, has been the most discussed body of human rights protection with a multitude of court proceedings every year.

2. Overview of the ECoHR activity in the field of human rights

With the view to find which human rights are most often violated it is crucial to give an overview of the ECoHR activity and its statistics.

The ECoHR is an international court set up in 1959. It rules on individual or state applications alleging violations of the civil and political rights set out in the European Convention on Human Rights (further referred to as Convention). As for the Convention itself, it is an international treaty under which the member states of the Council of Europe (including Russia) promise to secure fundamental civil and political rights, not only to their own citizens but also to everyone within their jurisdiction. The Convention, which was signed on 4 November 1950 in Rome, entered into force in 1953 [2].

Throughout its existence the Court has delivered about 18 000 judgments. Nearly half of the judgments concerned 5 member states: Turkey (3,095), Italy (2,312), Russia (1,604), Romania (1,113) and Poland (1,070).

The ECoHR judgments are binding for the countries concerned and have led governments to alter their legislation and administrative practice in a wide range of areas. The Convention supported by the Court's case-law is a powerful living instrument for meeting new challenges and consolidating the rule of law and democracy in Europe [3]. It is interesting to note that such case-law is perfectly acceptable for Russia because interpretations of the Convention are quite broad and include a variety of legal situations.

Finally, more than 42% of the violations found by the Court concern article 6 of the Convention, either on account of the fairness or on the length of the proceedings. The second violation most frequently found by the Court concerns the peaceful enjoyment of possessions.

So, the ECoHR is unique. In terms of numbers, no any other international tribunal deals with so many cases. In terms of substance, no any other supervisory body has been able to reach such a level of sophistication in shaping and refining human rights standards. In terms of significance, the Court's judgments have an impact which is hard to overestimate.

3. The most critical cases tried in the ECoHR

As mentioned above, there are 2 main types of human rights cases the Court considers mostly: the fair trial and the peaceful enjoyment of possessions. In this view, it seems appropriate to look into them in detail and take into consideration some of the Court's opinions and recommendations.

The fair trial. As one can see, article 6 of the Convention guarantees the right to a fair and public hearing in the determination of an individual's civil rights and obligations or of any criminal charge against him. The Court has interpreted this provision broadly on the grounds that it is of fundamental importance to the operation of democracy [4].

Many of the guarantees enshrined in article 6, in particular the concept of fairness, apply to both criminal and civil proceedings. Much of the Court's case-law has examined what safeguards need to be in place to guarantee access to court. Once judicial proceedings are under way, they must normally be conducted in public and a judgment must always be declared publicly. They must also be concluded by the delivery of a reasoned judgment within a reasonable time and compensation must be paid for undue delays. This obligation continues until the judgment is executed.

In the course of judicial proceedings children and other vulnerable parties must be accorded special protection.

Judges are considered by the ECoHR as the primary guardians of the right to a fair trial. It is their responsibility to ensure that proceedings in their court rooms, whether investigative, at trial or at the stage of the execution of judgments comply with the all specified standards. But they are not the only public officials with such responsibilities. The police and prosecutors are obliged to the victims of crimes (or surviving family members) and ensure an effective prosecution of the case. Public defenders, and legal aid lawyers in civil cases, who are charged with protecting the rights of their clients, must carry out their professional responsibilities to a standard which makes the fair trial guarantees «practical and effective not theoretical and illusory».

Finally, the application of article 6 is not limited to national judicial procedures. This principle applies during implementation of foreign judgments as well [5].

The peaceful enjoyment of possessions. The first thing to bear in mind when considering article 1 of the Protocol of 20 March 1952 is that the concept of property, or «possessions», is very broadly interpreted by the ECoHR. It covers a range of economic interests. The following have been held to fall within the protection under article 1: movable or immovable property, tangible or intangible interests, such as shares, patents, an arbitration award, the entitlement to a pension, a landlord's entitlement to rent, the economic interests connected with the running of a business, the right to exercise a profession, a legitimate expectation that a certain state of affairs will apply, a legal claim, and the clientele of a cinema.

Article 1 has been held to comprise three distinct rules. This analysis was first put forward by the ECoHR in its judgment in Sporrong and Lönnroth v. Sweden [6]. This is one of the most important decisions of the Court under article 1 and a guide to member states of the Council of Europe.

The case concerned some very valuable properties (buildings and land) in central Stockholm in Sweden. The County Administrative Board decided that the properties were needed for development, and so imposed two different kinds of measures: expropriation permits (which meant that the property might in the future be expropriated) and prohibitions on construction (which prevented any construction of any kind). During the time when these measures were in place, it obviously became much more difficult to sell the properties. The measures were eventually lifted due to a change in planning policy. The owners of the properties complained to the ECoHR under article 1 of the Protocol of 20 March 1952. They had received no compensation for the time when their properties were affected by the relevant measures.

The first question for the Court was whether there was any interference with property at all in compliance with article 1. The Court noted that although legally the owners' title to their property (i.e. ownership) remained intact, in practice the possibility of exercising the right to property was significantly reduced. The Court observed that the applicants' right to property became «precarious and defeasible». The Court, therefore, found that there had been an interference with applicants' right to property.

It then set out its analysis of article 1 as comprising three rules. The first rule, which is of a general nature, enounces the principle of peaceful enjoyment of property. The second rule covers deprivation of possessions and subjects it to certain conditions. The third rule recognizes that the states are entitled, amongst other things, to control the use of property in accordance with the general interest, by enforcing such laws as they deem necessary for the purpose. The Court also made the important statement of principle concerning the justification of interference and said that it was necessary to consider whether any interference with property strikes a fair balance between the protection of the right to property and the requirement of the general interest [7].

So, the question whether interference with one's property strikes a fair balance is, undoubtedly, of particular importance. Unfortunately, this is often neglected by Russian courts, which leads to unjust decisions.

4. Russia and the ECoHR

As can be seen, the role of the ECoHR in interpreting the Convention and, thus, implementation of effective protection of human rights in Europe is massive. But it does not mean that domestic courts of member states of the Council of Europe implement every ruling of the ECoHR. In particular, the relationships between Russia and the Court leave a lot to be desired.

These relationships go back as far as 1998 when Russia ratified the Convention. In accordance with article 46 of this document Russia undertook to abide by a final judgment of the ECoHR in any case to which it was a party.

Since that time up until 2010 Russia was implementing the ECoHR judgments properly and many Russian domestic laws were brought to conformity with the ECoHR rulings.

The situation changed dramatically in 2010 when many doubts arose among Russian politicians and legal community regarding the unconditional implementation of the ECoHR decisions. For instance, on 29 October 2010 the chairman of the Constitu-

tional Court V. Zorkin wrote in one of his articles that «if the ECoHR judgments were doubtful (from the point of view of the Convention itself) and affected national sovereigntyб then Russia was entitled to work out a defense mechanism against such judgments» [8].

On 16 June 2011 the deputy chairman of the Council of the Federation

A. Torshin introduced the amendments to the legislation with the purpose of establishing priority of the Constitution of Russia over the ECoHR decisions. In Torshin's opinion, Russian sovereignty and legislation were more important than the ECoHR. However, the draft law has never been approved.

All this resulted in the judgment of the Constitutional Court of the Russian Federation No 21-P of 14 July 2015 according to which the ECoHR judgments are no longer subject to unconditional implementation and from now on the Constitutional Court itself will decide whether a particular ECoHR decision needs to be implemented or not. [9].

Of course, the judgment was an acknowledgment of the approach formulated in Torshin's draft law that had been declined in 2011. Furthermore, the legal position of the Constitutional Court seemed to constitute a politically motivated decision. Due to the good faith obligation and the absence of political pressure there can be no obstacles to finding legal solutions to the implementation of international obligations. Finally, the judgment of the Constitutional Court breached the existing system of account and implementation of the ECoHR decisions and, possibly, caused Russia to make a step back in promoting effective protection of human rights. And that is the issue of big concern.

5. Conclusion

So, it can been seen from what has been said that effectiveness in the field of human rights law can be achieved only by means of collaboration between both nation states and international bodies. It is a state that violates human rights, therefore, some kind of a deterrent in a form of an international institution is needed in order to protect these rights.

This article has looked into the ECoHR and its role in establishing effective protection of human rights. Evidence is plentiful: interpretation of the Convention by the Court leads to good results in observing human rights in Europe.

In this uncertainty the judgment of the Constitutional Court of the Russian Federation of 14 July 2015 makes the situation even more complicated. Who now is going to be the main promoter of human rights protection in Russia if the ECoHR has been put on the sidelines? Will it be the Constitutional Court itself? These questions are open for further research and analysis because the official rejection of the ECoHR took place just recently. But, undoubtedly, the Constitutional Court made an attempt to show its supremacy and frequency of further demonstrations of such supremacy will determine development of the situation in the field of human rights in the future.

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УГОЛОВНАЯ ОТВЕТСТВЕННОСТЬ ЗА ПОВТОРНОЕ УПРАВЛЕНИЕ ТРАНСПОРТНЫМ СРЕДСТВОМ В СОСТОЯНИИ ОПЬЯНЕНИЯ

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Федеральным законом от 31.12.2014 №528-ФЗ [3] Уголовный кодекс Российской Федерации [1] (далее — УК РФ) был дополнен статьей 264.1 «Нарушение правил дорожного движения лицом, подвергнутым административному наказанию», предусматривающей уголовную ответственность за повторное управление транспортным средством в состоянии опьянения. Криминализация данного деяния обусловлена его общественной опасностью и широким распространением, необходимостью противодействия «дорожному рецидиву».