

COMMENTARIES

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CASE LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS APPLIED IN DECISIONS OF CONSTITUTIONAL COURTS AND STATUTORY COURTS OF CONSTITUENT ENTITIES OF THE RUSSIAN FEDERATION

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Abstract: The Convention for the protection of human rights and fundamental freedoms and the decisions of the European Court of human rights are an integral part of the Russian legal system and are taken into account by the legislator when regulating public relations and by law enforcement agencies when applying the relevant legal norms. The Russian Federation consists of entities where it is possible to establish their own constitutional (statutory) courts. In the Republic of Tatarstan and 14 other regions, such courts have been established. The article provides statistics on their application of the European court of human rights rulings, as well as the provisions of the European Convention, as well as the most frequently applied rulings and provisions. In addition, the article notes some decisions of the constitutional court of the Republic of Tatarstan, in which the provisions of the Convention and the practice of the European court of human rights contributed to the protection of human rights.

Keywords: case law, European Court of Human Rights, Constitutional court, Republic of Tatarstan

The consequences of the Second World War resulted in the need for a single organization of European nations. The Council of Europe, founded in 1949, was such an organization. According to the Statute of the Council of Europe, the purpose of the Council of Europe is to achieve greater unity among its Members in order

to defend and implement the ideals and principles, which are their common heritage and to contribute to their economic and social progress¹. A significant part of the Council of Europe's activities is devoted to the protection of human rights and freedoms. The European Convention for the Protection of Human Rights and Fundamental Freedoms adopted by the Council of Europe on November 4, 1950 is one of the most important documents in this field and entered into force on September 3, 1953. The European Convention proclaimed the fundamental principles related to human rights and freedoms. However, their admission could not be sufficient, if there was no mechanism to protect them. Lord Leighton, who took part in preparation of the Convention, put it into the following words: "Our Convention will only have real value, if we put it into effect and, in order to do so quickly and effectively, it must be provided with clear legal sanctions"². As a result, the Convention did not remain merely a declaratory instrument, as it provided a special mechanism for the enjoyment of the rights under it. This special mechanism was the European Court of Human Rights, established to ensure compliance with the obligations undertaken by member states. It is realized by investigation and resolution of complaints lodged by any individual, any non-governmental organization, or any group of individuals who claim that they are victims of violation by a member state of their rights acknowledged in the Convention or the Protocols thereto as well as issues of alleged violation by a member state of the provisions of the Convention and the Protocols thereto upon the request of the other member state.

"The value of the Convention, — writes, for example, K. Vasak, a famous French scientist, — is determined by its mechanism, not by the rights it protects. For the first time ever, — he emphasizes, — there is an international mechanism that operates outside the state and "expresses the common values of all mankind". According to other scientists, it is "unique, vital and developing"³.

The Russian Federation joined the Council of Europe on February 28, 1996 and was its 39th member and the Russian Federation ratified former signed Convention and Protocols thereto, with a number of reservations under its Federal Law No. 54-FZ dated March 30, 1998.

According to the Constitution of the Russian Federation, everyone has the right, in accordance with international treaties to which the Russian Federation is a party, to apply to inter-state bodies for the protection of human rights and freedoms, if all available domestic remedies have been exhausted (Article 46, Part 3).

¹ Statute of the Council of Europe (*ETS* No. 1) [Russian, English] (Adopted in London 05.05.1949) // Russian Federation Code. 24.03.1997. No. 12

² *Tumanov V. A.* European Court of Human Rights. Essay on organization and activity. Moscow: NORMA Publishing House, 2001. P. 8–9.

³ *Bessarabov V. G.* European Court of Human Rights. Moscow: Yurlitinform Publishing House, 2004. P. 17.

The orders of Article 15 (Part 4) of the Constitution of the Russian Federation are in conjunction with this provision of the Constitution of the Russian Federation, which Article provides that international treaties of the Russian Federation are an integral part of its legal system, and Article 79, which provides that the Russian Federation may participate in inter-state associations and transfer the part of its powers to them in accordance with international treaties, provided that it does not provoke restrictions on human and civil rights and freedoms and does not conflict with the foundations of the constitutional order of the Russian Federation¹.

By ratifying the Convention for the Protection of Human Rights and Fundamental Freedoms, the Russian Federation accepted the jurisdiction of the European Court of Human Rights as binding with regard to the interpretation and application of the Convention and the Protocols thereto in case of alleged violation by the Russian Federation of the provisions of these compacts. Thus, both the Convention for the Protection of Human Rights and Fundamental Freedoms and the judgments of the European Court of Human Rights, to the extent that they interpret the content of the rights and freedoms set forth in the Convention including the right of access to the courts and fair justice proceeding from universally recognized principles and norms of international law — are an integral part of the Russian legal system and, therefore, must be taken into account by federal legislators when regulating social relations and law enforcement agencies in case of applying the relevant rules of law².

P. A. Laptev, who was the Commissioner of the Russian Federation for the European Court of Human Rights from 1999 to 2007, also stated that “case law of the European Court is becoming an integral part of the legal system of the Russian Federation, and it is hardly possible to deny it at present”³.

It should be noted that the courts take into account the legal positions of the judgments of the European Court of Human Rights, which have been adopted not

¹ Constitution of the Russian Federation (adopted by popular vote on 12.12.1993) (subject to the amendments made under the Laws of the Russian Federation On Amendments to the Constitution of the Russian Federation No. 6-FKZ dated 30.12.2008, No. 7-FKZ dated 30.12.2008, No. 2-FKZ dated 05.02.2014, No. 11-FKZ dated 21.07.2014) // Official Internet portal of legal information <http://www.pravo.gov.ru>, 01.08.2014, Russian Federation Code, 04.08.2014, No. 31, Art. 4398.

² Ruling of the Constitutional Court of the Russian Federation dated February 05, 2007, No. 2-P. On the Case of Verification of Constitutionality of Provisions of Articles 16, 20, 112, 336, 376, 377, 380, 381, 382, 383, 387, 388 and 389 of the Civil Procedural Code of the Russian Federation in connection with the request of the Cabinet of Ministers of the Republic of Tatarstan, Complaints of Nizhnekamskneftekhim and Khakasenergo Open Joint-Stock Companies, and also Complaints of Some Citizens // Gazette of the Constitutional Court of the Russian Federation, 2007, No. 1, Russian Federation Code, 12. 02.2007, No. 7, Art. 932, Rossiyskaya Gazeta, 14.02.2007, No. 31.

³ *Zimnenko B. L.* International Law and Legal System of the Russian Federation. Moscow: RAP; Statute, 2006. P. 308.

only with regard to the Russian Federation, but also with regard to other member states to the Convention, if the facts of the case, which it considers are similar to those which are the subject matter of analysis and conclusions of the European Court of Human Rights.

Indeed, the provisions of both the Convention and the judgments of the European Court of Human Rights are often used in the judgments of the Constitutional Court of the Russian Federation and constitutional (statutory) courts of the constituent entities of the Russian Federation. If we analyze the judgments of the Constitutional Court of the Russian Federation, then almost all the judgments adopted by the Court have references to the universally recognized principles and norms of international law, including those enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms; however, the application of the case law of the European Court of Human Rights is also not uncommon.

As for the constitutional (statutory) courts of the constituent entities of the Russian Federation, the situation is slightly different. From the date, on which the Russian Federation ratified the Convention and up to 2019, only 9 of 15 courts applied the case law of the European Court of Human Rights in their decisions, and 9 courts also applied the provisions of the Convention¹.

Speaking specifically of the provisions of the Convention, the constitutional courts of the Republic of Dagestan, Mari El, Kabardino-Balkaria applied it in 1 decision, the Constitutional Court of the Republic of Adygea applied in 2 decisions, the Constitutional Court of the Republic of Sakha (Yakutia) applied in 3 decisions, the constitutional courts of the Republic of Karelia, Komi, North Ossetia-Alania applied in 6 decisions, the Constitutional Court of the Republic of Tatarstan applied in 13 decisions. At the same time, the constitutional courts of the Republic of Bashkortostan, Ingushetia, the Chechen Republic, the statutory courts of Kaliningrad Oblast, St. Petersburg and the Sverdlovsk Oblast did not apply the Convention in their decisions².

The decisions of the European Court of Human Rights were applied by the Constitutional Courts of the Republic of Mari El, Sakha (Yakutia), the Constitutional Court of the Sverdlovsk Oblast applied them in 1 decision, the Constitutional Courts of the Republic of Bashkortostan, Komi applied in 2 decisions, the Constitutional Courts of the Republic of Ingushetia, North Ossetia-Alania applied in 3 decisions, the Constitutional Court of the Republic of Karelia applied in 4 decisions, the Constitutional Court of the Republic of Tatarstan applied in 20 decisions. The

¹ From official sites of constitutional (statutory) courts of the constituent entities of the Russian Federation ConsultantPlus computer-assisted legal research system.

² Ibid.

constitutional courts of the Republic of Adygea, Dagestan, the Chechen Republic, the Republic of Kabardino-Balkaria and the Constitutional Court of the Republic of Kaliningrad and St. Petersburg did not apply the case law of the European Court of Human Rights in their decisions¹.

The Constitutional Court of the Republic of Tatarstan applied the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms and the law case of the European Court of Human Rights in 24 of 84 final judgments. For the first time, the Constitutional Court of the Republic of Tatarstan applied the provisions of the Convention in its Decision No. 20-P dated May 11, 2006². While formulating its legal position the Court referred in that decision to Article 3 of Protocol No. 1 to the Convention, which provided the right to free election.

It should be noted that the constitutional and statutory courts of the constituent entities of the Russian Federation most often referred in their decisions to Article 3 of Protocol No. 1 to the Convention, according to which member states undertake to hold free elections at reasonable intervals by secret ballot under conditions which would ensure the free expression of the will of the people in electing the legislative bodies³. Article 1 of Protocol No. 1k to the Convention for the Protection of Property, according to which every individual or legal entity has the right to respect for his, her or its property, is also frequently applied; no one shall be deprived of his or her property except in the public interest and under the conditions prescribed by law and the general principles of international law⁴.

¹ From official sites of constitutional (statutory) courts of the constituent entities of the Russian Federation ConsultantPlus computer-assisted legal research system.

² Ruling of the Constitutional Court of the Republic of Tatarstan No. 20-P dated May 11, 2006. On the Case of Verification of the Constitutionality of Certain Provisions contained in the Annex to the Ruling of the Head of the Administration of Kazan No. 2086 dated August 23, 2005. On Opening in the Territory of Kazan of Polling Stations for the Election of Deputies to the Representative Body of the Municipal Entity of Kazan, in connection with the complaint of citizen M. G. Pikashova // Republic of Tatarstan, 16.05.2006, No. 97, Vatanym Tatarstan, 13.05.2006, No. 92–93.

³ Convention for the Protection of Human Rights and Fundamental Freedoms (Concluded in Rome on 04.11.1950) (as amended on 13.05.2004) (together with Protocol [No. 1] (signed in Paris on 20.03.1952), Protocol No. 4 on Enforcement of some Rights and Freedoms other than those already included in the Convention and the first Protocol thereto (signed in Paris on 20.03.1952), Protocol No. 4 on the Protection of Human Rights and Fundamental Freedoms (signed in Paris on 20.03.1952). Strasbourg 16.09.1963), Protocol No. 7 (signed in Strasbourg 22.11.1984) // Russian Federation Code, 08.01.2001, No. 2, Art. 163, International Treaty Bulletin, 2001, No. 3.

⁴ Convention for the Protection of Human Rights and Fundamental Freedoms (Concluded in Rome on 04.11.1950) (as amended on 13.05.2004) (together with Protocol [No. 1] (signed in Paris on 20.03.1952), Protocol No. 4 on Enforcement of some Rights and Freedoms other than those already included in the Convention and the first Protocol thereto (signed in Strasbourg on 16.09.1963), Protocol No. 7 (signed in Strasbourg on 22.11.1984) // Russian Federation Code, 08.01.2001, No. 2, Art. 163, International Treaty Bulletin, 2001, No. 3.

As for the case law of the European Court of Human Rights, the judgment of the European Court of Human Rights dated May 24, 2007 in the case Ignatov vs. the Russian Federation, the judgment dated May 24, 2007 in the case Vladimir Solovyev vs. the Russian Federation, and the judgment dated March 31, 2009 in the case Weller v. Hungary were the most frequently applied in decisions of constitutional and statutory courts of the constituent entities of the Russian Federation. The judgments of the European Court of Human Rights dated May 24, 2007 in the case Ignatov vs. the Russian Federation and dated May 24, 2007 in the case Vladimir Solovyev vs. the Russian Federation were frequently applied as regards the point of view contained in them, according to which it was required that the law made it possible to foresee the consequences of its application, thus complying with the legality standard established by the Convention, which standard requires that all laws have precise wording enabling a person to foresee to the extent reasonable in the circumstances the consequences, which any action may have¹. The constitutional and statutory courts of the constituent entities of the Russian Federation more frequently applied the judgment of the European Court of Human Rights dated March 31, 2009 in the case Weller vs. Hungary, namely the provision prohibiting differentiation, which places families with children in a position of inequality in terms of access to benefits for support of the children and the family as a whole².

I consider it necessary to note some decisions of the Constitutional Court of the Republic of Tatarstan, in which the provisions of the Convention have contributed to the protection of human rights. Thus, by ruling No. 61-PK dated March 19, 2015 the Constitutional Court of the Republic of Tatarstan declared the contested provisions not complying with the Constitution of the Republic of Tatarstan, stating that provision under the contested regulatory legal act of a compensation for damages caused by vehicles transporting heavy goods by public roads of Almetyevsk is a restriction on the constitutional right of private property of the owners and users of the specified vehicles in the form of collection by local governments of statutory

¹ Judgment of the European Court of Human Rights dated 24.05.2007 in the case of Ignatov vs. the Russian Federation. (complaint No. 27193/02) The unlawfulness and excessive duration of pre-trial detention was appealed with regard to case. The case involved violation of paragraphs 3 and 4, Article 5, paragraph 1 (c), of the Convention for the Protection of Human Rights and Fundamental Freedoms // Bulletin of the European Court of Human Rights, 2007, No. 10.

Judgment of the European Court of Human Rights dated 24.05.2007 in the case of Vladimir Solovyev vs. the Russian Federation. (complaint No. 2708/02) // Bulletin of the European Court of Human Rights. Russian Edition, 2007, No. 12.

² Judgment of the European Court of Human Rights dated 31.03.2009 in the case of Weller vs. Hungary. (complaint No. 44399/05). The refusal to pay the benefit on the basis of the father's status and nationality was appealed with regard to case. The case involved violation of the requirements of Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms // Bulletin of the European Court of Human Rights, 2009, No. 8.

charges not stipulated by federal law. This conclusion was also based on the provisions of Article 1 of Protocol No. 1 to the Convention applied by the Constitutional Court of the Republic of Tatarstan in this case¹.

The Constitutional Court of the Republic of Tatarstan concluded in another ruling, that the regulation provided for in the standard under appeal, which establishes the registration of all members of a family with many children at the same place of residence as a binding condition for obtaining the above social safety net, is, in fact, a technical and legal hurdle for the exercise of their right to housing improvement. The granting of certificates to families with many children whose members are registered at the same place of residence, where it is impossible for families falling into the same category but not having co-registration to obtain similar social guarantees, results in unjustified differentiation, which, in turn, results in decrease in the level of their social protection. Such legal regulation, in violation of the constitutional principle of equality, results not only in the unjustified differentiation of the scope of the social rights of the families with many children, which need housing improvement, but also strains the sense of the right in question, which is inconsistent with the constitutionally significant goals of possible restrictions on human and civil rights and freedoms. This opinion of the Court also complies with the provisions of judgment dated March 31, 2009 in the case *Weller vs. Hungary* of the European Court of Human Rights, which the Constitutional Court of the Republic of Tatarstan referred to in its decision².

Thus, the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms and the case law of the European Court of Human Rights, having become an integral part of our legal system one day, have played

¹ Decision No. 61-P of the Constitutional Court of the Republic of Tatarstan dated March 19, 2015 in the case No. 63 dated May 30, 2012 on Verification of the Constitutionality of the Rules of Site Improvement of the city of Almetyevsk, Almetyevsk Municipal District of the Republic of Tatarstan, Provisions on Compensation for Material Damage of Public Roads caused by Heavy Duty Vehicles approved by Order No. 691 of the Executive Committee of Almetyevsk Municipal District dated February 26, 2009, Items 1 and 2 of the Provision No. 265 on Municipal Road Traffic approved by Decision of the Almetyevsk Municipal District Council dated August 05, 2008 in connection with the complaint of Mr. I. V. Avdeyev // *Vatanyam Tatarstan*, 04.04.2015, No. 48, the Republic of Tatarstan, 07.04.2015, No. 48.

² Decision No. 83-P of the Constitutional Court of the Republic of Tatarstan dated May 30, 2019 in the case of Verification of the Constitutionality of Subparagraph (a), Paragraph 4, the Rules for Issue and Implementation of Certificates to Provide Housing to Families with Many Children, which need Housing Improvement approved by Resolution No. 326 of the Cabinet of Ministers of the Republic of Tatarstan dated May 16, 2008 On Amendment of Resolution No. 732 of the Cabinet of Ministers of the Republic of Tatarstan dated December 18, 2007 on Measures to Provide Housing to Families with Many Children, which need Housing Improvement, in connection with the complaint of Mr. A.V. Orlov // Official Portal of Legal Information of the Republic of Tatarstan <http://pravo.tatarstan.ru>, 09.07.2019, the Republic of Tatarstan, 12.07.2019, No. 99, *Vatanyam Tatarstan*, 13.07.2019, No. 100.

a significant role in the protection of civil rights and freedoms by the constitutional and statutory courts of the constituent entities of the Russian Federation. Even today, they are an important guideline both in case of administration of justice and in case of legal regulation and law enforcement. There is no doubt that the application of international rules by courts in case of awarding judgment brings an explicit responsibility for judges, but if properly applied and interpreted, the provisions of the Convention and the case law of the European Court of Human Rights provide an additional guarantee of protection of civil rights and freedoms.

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