

The Position of Constitutional Court of the Russian Federation on Execution of European Court of Human Rights

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Abstract

From the point of view of legal regulation, the international law widely interferes into the national right of Russia. However, to integrate rules of international law into national legal system completely won't be possible as it is interfered by the national peculiarities to some extent correcting decisions of the European Court of Human Rights (further in the text – the European Court of Justice) [1, page 26]. In this article authors carry out the analysis of the decision of the Constitutional Court of the Russian Federation in which the problem of a possibility of execution of decisions of interstate bodies, in particular the European Court of Human Rights rises. The reasons which have induced the Constitutional Court to adopt such Resolution are established and considered by authors and also it is analyzed positions of the European Court of Human Rights from the point of view of the Constitution of the Russian Federation and international legal regulations. At the end of a research authors come to a conclusion that the main arguments of Court are extremely unconvincing and contradictory from the point of view of the doctrine and practice of international law.

Key words: Constitutional court of the Russian Federation, European Court of Human Rights, legal position, international contracts of the Russian Federation, Validity

INTRODUCTION

Uncertainty in interpretation of part 4 of article 15 of the Constitution of the Russian Federation became the basis for emergence of a problem of a ratio of validity of the Constitution of Russia and international treaties where it is told that the principles and rules of international law and the international contracts of Russia are a component of legal system of the state and if the international treaty has established other rules of conduct than provided by the law of the state, then provisions of the international treaty are subject to application. A number of researchers at interpretation of this norm consider that it fixes a priority of the Constitution of the Russian Federation

over international treaties; other part of researchers thinks differently [2, page 567].

On July 14, 2015 the Constitutional Court of the Russian Federation the Resolution No. 21-P which edition reasons, on according to I.E. Hlopov, are political [3, page 173] was accepted as in 2014 the Russian Federation has lost the case against Yukos in the European Court of Human Rights as a result of which the state has been obliged to pay to this company compensation of 1,86 billion euros. Besides, Hague Court has obliged to pay the Russian Federation till January 15, 2015 compensation to the former shareholders of Yukos of 50 billion dollars [4].

In a year, in June, 2015, the Ministry of Justice of the Russian Federation refused to execute the decision of the European Court of Justice before decision by the Constitutional Court of the Russian Federation of the decision on the case of compliance of article 1 of the law “About Ratification of the Convention on Protection of Human Rights and Fundamental Freedoms and Protocols to It” of the Constitution of the Russian Federation [5].

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After that France and Belgium arrested assets of Russia in the claim of the former shareholders of Yukos, as implementation of the mechanism of forced execution of decisions of Hague Court.

The inquiry of group of deputies of the State Duma of the Russian Federation, in connection with the arisen uncertainty in the solution of a question of a possibility of performance of resolutions of the European Court of Justice when such resolutions contradict the Constitution of Russia became a direct reason for consideration of this case by the Constitutional Court. It follows from this that before the Constitutional Court the question of the place of international treaties in the legal system of Russia and their ratio with the Constitution of the Russian Federation hasn't been directly raised, and the problem of a possibility of performance of individual normative legal acts to which also resolutions of the European Court of Justice belong, in that case when they contradict the Constitution of the Russian Federation was only subject to the decision. Points to it also the Constitutional Court, when speaks that applicants don't call in question any provisions of the Convention on protection of human rights and fundamental freedoms (further in the text – the Convention) as multilateral international treaty of the Russian Federation. However, it should be noted that resolving an issue of a possibility of non-execution of decisions of the Convention, the Constitutional Court thereby calls into question into article 46 of the Convention in which it is told about obligation for the state of the final decision of the European Court of Justice without any reservations [6]. Thus, the Constitutional Court in the Resolution indirectly calls in question the Convention and some other contracts of the Russian Federation though it and denies.

DATA AND METHODS

In general all arguments both supporters, and opponents of legal rule of the Constitution of the Russian Federation over international treaties can be subdivided into two big groups. The first group is arguments which are based on internal Russian normative legal acts, first of all, of the Constitution of the Russian Federation. The second group of arguments relies on norms and the principles of international law (for example, on the Vienna Convention on the right of international treaties). Therefore also the Resolution of the Constitutional Court can be considered from these two different positions.

The constitutional court notes that proceeding from the text of the Constitution of the Russian Federation, for example, of part 1 of article 4, part 1 of article 15 and

article 79 where sovereignty of Russia is fixed, supremacy and the highest validity of the Constitution of the state and inadmissibility of introduction in the legal system of the state of international treaties which can lead to restrictions of human rights or encroach on bases constitutional the Russian Federation and by that to violate the Constitution of the Russian Federation, the Convention on protection of human rights and fundamental freedoms, neither other international treaty of Russia, nor legal positions of the international bodies based on them cancel for domestic legal system a priority of the Constitution of the Russian Federation and therefore they are subject to realization and execution within this legal system only on condition of recognition of legal rule of the Constitution of the Russian Federation. The constitutional court draws a conclusion about a priority of the Constitution of the Russian Federation over international treaties and law-enforcement acts, proceeding from part 1 of article 15 of the Constitution in which it is told about the highest validity of this act.

The constitutional court also analyzes part 4 of article 15 and article 79 of the Constitution of the Russian Federation according to which the conventional principles and rules of international law and the international contracts are a component of legal system of the Russian Federation and also Russia can be the participant of the international associations, only if such participation doesn't contradict bases of the constitutional system and also doesn't violate the rights and legitimate interests of citizens. It should be noted that in the Constitution of the Russian Federation the reservation on impossibility of the international cooperation is made if it breaks bases of the constitutional system, only concerning participation in the international associations, which is in the international organizations. Therefore participation of the Russian Federation in international treaties, not directed to the entry of the state into the international organization and which break such bases are directly not forbidden by the Constitution.

Proceeding from this logic it is possible to come to a conclusion that part 4 of article 15 doesn't regulate a legal ratio of the Constitution of the Russian Federation and international treaties in any way. Moreover, any of other constitutional norms directly doesn't solve this problem. The constitutional court speaks about a priority of the constitutional norms before international, proceeding from part 1 of article 15 in which it is told about legal rule of the Constitution. However such conclusion isn't absolutely right. Applying teleological interpretation, it is possible to come to a conclusion that regarding 1 article 15 authors of the Constitution didn't aim to

show a priority of the constitutional norms before international. It can be brought out of the second offer of this part where it is said that laws and other legal acts of the Russian Federation shouldn't contradict the Constitution. Creators of the Constitution in this part spoke only about the highest validity of the Constitution in hierarchy of internal Russian legal acts. Therefore to say what Constitutions has the highest validity including before international treaties, proceeding from part 1 of article 15 of the Constitution of the Russian Federation it isn't absolutely lawful. If this hierarchy really took place, then the Constitutional Court would possess power to check compliance of the existing international treaties of the Constitution of the Russian Federation, however the Constitutional Court has no such right. It can indirectly demonstrate that the international contracts have to correspond to the Constitution only at the time of the conclusion, and concerning the signed contracts and acts adopted on their basis the constitutional control isn't applicable, means they Constitutions can contradict, remaining at the same time obligatory.

Having provided arguments, based on the Constitution of the Russian Federation, the Constitutional Court passes to arguments from sources of international law. As specifies the Constitutional Court: "At permission of the constitutional and legal collisions able to arise in connection with interpretation of the Convention on protection of human rights and fundamental freedoms as the international treaty of the Russian Federation, it is necessary to consider the Vienna convention on the right of international treaties which participant is Russia". The court analyzes the 26th article of this Convention in which one of the fundamental principles of international law – *pacta sunt servanda* is enshrined [7]. According to this principle each existing contract is obligatory for its participants and has to be carried out by them honestly. Further the Constitutional Court in the Resolution refers on article 31 of the Convention in which it is enshrined that the states need to interpret the contract honestly, from this the Constitutional Court draws a conclusion that the state has the right to refuse performance of the contract, in particular to evade from execution of decisions of the European Court of Human Rights if the European Court of Justice in the decision has interpreted the Convention unfairly, and such interpretation isn't conventional.

RESULTS AND DISCUSSION

In our opinion, such logic of the Constitutional Court is not correct. In article 32 of the European Convention on human rights it is set that an official interpreter of

the European Convention is the European Court of Human Rights. Neither the Convention, nor Protocols to it provide other subjects which would have a function of interpretation of this Convention. From this it is possible to draw a conclusion that the single official interpreter of the Convention is the European Court of Justice [8]. As the states equipped the European Court of Justice with such functions, it means that such interpretation of the Convention always is the only thing conventional. Such logic of the Constitutional Court of the Russian Federation has the right for existence when the international treaty provided no organ which is engaged in interpretation of this contract. If such organ is provided by the contract, then its interpretation is always considered conventional, and it is mandatory for the state.

Also the reference of the Constitutional Court of the Russian Federation to paragraph 1 of article 46 of the Vienna convention according to which the state has the right to block action concerning him separate provisions of the international treaty is submitted unreasonable in this decision, referring to that circumstance that consent to obligation for him this contract has been expressed to them in defiance of this or that provision of his internal law concerning competence to sign contracts if this violation was obvious and concerned standard of the internal law especially of importance. Consent to obligation of the Convention has been expressed in full compliance with internal Russian law therefore the appeal of the Constitutional Court of the Russian Federation to this norm is submitted strange.

Further in the decision the Constitutional Court of the Russian Federation speaks about a collision of interpretation of the conventional situation given by the European Court of Human Rights in the resolution on concrete business and provisions of national constitutions, including in their interpretation by the constitutional courts. That is, in particular, the Constitutional Court of the Russian Federation considers a collision between interpretation of the Convention and interpretation of the most Constitutional Court of the Russian Federation. By sight I.E. Hlopova, it "the conflict of interpretation between the Constitutional Court of the Russian Federation and the European Court of Human Rights" can't arise in principle [3, page 175]. It follows from the fact that the collision of interpretation can arise only when one precept of law, and an interpretation subject at these vessels different is interpreted, they interpret different precepts of law: The constitutional court of the Russian Federation has the right to interpret only the constitutional norms of the Russian Federation and nothing except them whereas the European Court of Justice is an official interpreter only of the Convention.

CONCLUSIONS

Proceeding from the arguments given above, it is possible to come to a conclusion that proceeding from international treaties and customs, the state has to execute both the international treaty, and any decisions of the interstate bodies based on these contracts, even despite their contradiction to internal normative legal acts, including the Constitution. This rule is directly enshrined in article 26 of the Vienna Convention on the right of international treaties, and this rule doesn't provide any exceptions for the constitutional norms, the state voluntarily and voluntarily connects itself by the international treaty, itself assumes duties of the international character. If the state considers for itself the contract unacceptable as it encroaches on the constitutional system, then it shouldn't enter this contract at all. For this purpose in Russia the possibility of the constitutional control of the international treaties which haven't come into validity proceeding from the point of part 2 of article 125 of the Constitution of the Russian Federation is also provided in advance to reveal the standards of international treaties which haven't come into validity which contradict the Constitution of the Russian Federation. If on preliminary constitutional control the contradiction of the constitutional norms and standards of international treaties doesn't come to light, but the state all the same seeks to prevent emergence of such conflict with the contract which has already come into force, then it has the right to make the corresponding reservation during the signing, ratification or at accession to the contract when the possibility of such reservations isn't forbidden by the contract. But it is represented that the reservation on "protection of the constitutional system" will be too uncertain as she doesn't allow defining precisely the value and the scope of application that can give to the state a reason for abuse of this norm. Reservations have to be accurate, unambiguous and clear. If such reservations haven't been made, and the existing international treaty has conflicted to the constitutional norms, and the state wants to give a priority to the internal norms, then an exit from him will be the only possible exit from the point of view of international law.

We will consider the possibility of non-execution of decisions of interstate bodies by the Russian Federation, from the point of view of the theory of international law, on the example of non-execution of resolutions of the European Court of Justice by Russia. Within judicial proceedings the claimant and the defendant are equal subjects. That is, the citizen or the non-state organization being a claimant are legally equal in these concrete judicial proceedings (ad hoc) to the state as to the defendant. Therefore it is represented strange that the

possibility of execution of the decision of the European Court of Justice, according to logic the Constitutional Court, has to be defined by internal body of the state. Thus, the defendant in judicial proceedings itself solves whether to execute to him the judgment or not, and it breaks procedural equality of the claimant and defendant. From the point of view of the doctrine of international law it is wrong. The citizen can appeal to the European Court of Justice, only when all internal remedies have been exhausted if the state can protect human rights the internal mechanisms, then the citizen has no bases for the appeal to the European Court of Justice. If the citizen after all has appealed to interstate court, then it means that any internal public authority couldn't protect his rights and interests in full. For this purpose, for the purpose of additional protection of human rights when the internal mechanisms don't work, the state also has joined the Convention. When the court has passed the decision in favor of the claimant, the state the defendant has no right to refer to provisions of the internal law as this complex of the rights couldn't protect fully the right, freedoms and the interests of the citizen earlier. To the discretion of the state the question isn't taken away to execute or not to execute the decision of the European Court of Justice, and only a question of the mechanism of execution of such decision [10, page 55].

If the state refuses to apply the international treaty, referring to the fact that it contradicts the Constitution, then it doesn't exempt the state from the international liability as it is violation of the international legal obligation and as such state will be considered as the offender. The State Party of the contract has no right to refer to provisions of the internal normative legal acts including on the Constitution, for non-execution of the undertaken international obligation.

SUMMARY

Thus, having critically analyzed the Resolution of the Constitutional Court of the Russian Federation, authors I have drawn a conclusion on extreme discrepancy of a number of positions of Court. Also authors are convinced that these positions contradict the doctrine and practice of modern public international law that can't cause concerns for the further international legal fate of the Russian Federation.

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