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List of Abbreviations

- **ECHR** European Convention for Human Rights
- **ECtHR** European Court of Human Rights
- **RF** Russian Federation
- **CoE** Council of Europe
- **PACE** Parliamentary Assembly of the Council of Europe
- **EMC** European Ministerial Conference
- **CM** Committee of Ministers
- **CC** Constitutional Court
- **EU** European Union
- **GC** Grand Chamber
- **MS** Member States
- **Art.** Article

1. INTRODUCTION

In the twenty-first century, humanity is awakening to realize itself as a whole, the evolution of which offers the prospect of leading from the community of states towards a more advanced "human community" with frequent challenges, interests, and understanding of the value of human dignity.

The growing awareness of the interdependence of all members of today's global community contributes to the understanding of the need for collective efforts in such priority areas as peace and security, international trade and investment, migration, environmental protection and human rights¹.

The topic of this thesis is the ECtHR: the organization that acts as an effective way of protecting and respecting human rights². The ECtHR is recognizable as such, not only as an international court that is capable of restoring violated rights and freedoms but also as an institution that has a preventive impact on any possible human rights violations. It contributes to the implementation of the CoE MS obligations on respecting human rights under international law. In this regard, it is fair to say that the ECtHR is a powerful tool that can stimulate the development of national legal systems³. The protection of human rights is an issue that had a significant impact on the history of civilized nations and remained the same up to now.

The work of the ECtHR is based on the principle of subsidiarity, according to which the leading role in the protection of human rights enshrined in the ECHR and international responsibility rests with national authorities of the CoE MS and their bodies.

National courts have the power to apply the provisions of the ECHR in their jurisprudence and provide adequate protection.

However, when such national protection, for various reasons, turns out to be ineffective, individuals can lodge applications with the ECtHR.

¹ Dougherty J., Pfaltzgaff R., *Contending Theories of International Relations. A Comprehensive Survey*. N.Y.: Longman, 1997. P. 32.

² Janis M., Kay R., Bradley A., *"European Human Rights Law: Text and Materials"* (Oxford, 2008).

³ Heifer L. Slaughter A., *"Toward a Theory of effective supranational adjudication"* (Yale Law Journal, 1997) № 2, p. 273.

The relevance of the thesis is due to the enormous role of the ECtHR in the effective protection of violated human rights.

The ECtHR enables to restore the violated human rights enshrined in the Convention and provides justice when the domestic judicial system ignores violations of human rights and freedoms, arbitrary practices directed against the identity by public authorities and officials.

Despite the fact that almost twenty years ago Russia ratified the Convention and recognized the jurisdiction of the ECHR binding and mandatory for the application of the Convention and its Protocols, the problem of non-compliance with judgments of the ECtHR in Russia has remained as relevant as ever for decades.

In recent years, the problem has also been actualized by the fact that the CC of the RF has received unprecedented powers to the recognition of the possibility of Russia's non-compliance with judgments of the ECtHR in case of their contradiction to the norms of the Constitution of the RF.

These powers of the Constitutional Court cause controversial debate not only among scientists but also politicians.

The main purpose of this thesis is to study the features of the ECtHR, the history of its formation, the situation in the modern world community and in particular in the RF

To achieve this goal is necessary to solve the following objectives:

1. to trace the history of the ECtHR;
2. to describe the internal structure and proceeding of the ECtHR;
3. to uncover the concept of the proceeding before the ECtHR and its characteristics;
4. to identify the challenges to enforcement of the ECtHR judgments in Russia;
5. to determine the role of the CC of the RF in the execution of the ECtHR judgments.

The object of the study is the ECtHR as an international body carrying out its activities in order to establish justice through the restoration of violated rights.

The subject of the study is the ECtHR's activities and problems of the execution of the ECtHR legal acts in the territory of Russia.

The theoretical basis of the study is the scientific works of Russian and European legal scholars.

The empirical basis of the study is the ECtHR decisions made concerning Russia, the case law of the CC of the RF, statistical information reflecting the activities and enforceability of the ECtHR judgments in Russia.

The methodology of the study is represented by the universal dialectical method of cognition, methods of analysis and synthesis, comparison and generalization.

The thesis consists of three main parts.

The first part highlights the prerequisites for the establishment of the ECtHR, its evolutionary development at various stages, the internal structure of the ECtHR, the concept of the proceeding, and its characteristics.

The second is devoted to the problems of implementation of the ECtHR judgments in Russia, the role of the CC of the RF in the enforcement of the ECtHR acts.

The third is more of a practical approach. It provides the reader with a brief overview of the Markin case.

At the end of the thesis, the results of the study comprise the conclusion circling the problem areas.

2. THE ORGANIZATION OF THE ECtHR

2.1. History and Evolution

The ECtHR was established on 21 January 1959. The founders were eight countries: Denmark, Ireland, Italy, Luxembourg, Norway, Turkey, France, and Sweden. The establishment of the ECtHR was aimed at ensuring compliance with the obligations set out in the Convention and the consideration of complaints about violations of the Convention, which means the supranational protection of human rights and freedoms under the Convention.

In the academy, six stages in the history of the ECtHR are defined:

1. Preliminary or "quasi-judicial" stage (1954 - 1959);
2. The formative stage of the ECtHR as an independent element of the control mechanism of the Convention (1959 – the 1970s);
3. The stage of maturity of the ECtHR (the 1970s - 1990);
4. The stage of a massive expansion of territorial competence of the ECtHR (with the increase in the amount of MS to the Convention) and the admission of individual applicants (1990 - 1998);
5. Post adjustment stage (after the reform of the control mechanism under Protocol No. 11 to the Convention (1998 - 2004);
6. The stage of searching for new ideas of reforming the ECtHR, strengthening the "constitutional" aspects of its work (from 2004 to the present)⁴.

⁴ Чертов А. А. Европейский Суд по правам человека – развитие международного права по правам человека (Москва, 2007) С. 63. // Chertov A. A. The European Court of Human Rights - the Development of International Human Rights Law (Moscow, 2007) P. 63.

At the first (quasi-judicial) stage, the ECtHR regarding its status could not independently receive any complaints. The applicants had to apply to another body - the European Commission of Human Rights, which was established long earlier in 1954. Its members were appointed by the CM, a statutory body of the CoE composed of state representatives.

The Commission operated on a non-permanent basis, and the Secretary General of the CoE convened its meetings. Consequently, at this stage, the control of states over the supervisory mechanism has been maximized, drawing much attention to the amicable settlement of disputes.

The hearing of cases in the Commission proceeded to the closed sessions. The European Commission of Human Rights has primarily considered the admissibility of complaints (petitions). In case of acceptance of a petition, the Commission together with representatives of the parties studied the petition for the purpose of determination of facts and at the same time placed itself as stipulated by Art. 28.1 (b) of the Convention (edition № 1), at the disposal of interested parties concerned with a view to securing an amicable settlement of the matter on the basis of respect for Human Rights as defined in this Convention⁵.

If an amicable settlement could not be reached, the Commission prepared reports in which it expressed the view on whether or not there had been a violation of the Convention. Such a report was submitted for the consideration of the CM of the CoE and interested parties.

In their relations with the Commission, states were represented by specially appointed agents. Individuals, non-governmental organizations or groups of individuals could lodge complaints or address the Commission in person or with the assistance of a representative.

If at the stage of considering the admissibility of the complaint the European Commission acted as a real judicial body and carried out "legally binding decisions", the examination of a complaint under the former Art. 28 of the Convention was quasi-judicial.

The Commission was entitled in accordance with Art. 28.1 (a) of the Convention⁶ (edition № 1) to carry out an investigation, including a visit to the territory of the State party to the

⁵ URL: <https://www.echr.coe.int/Documents/Collection_Convention_1950_ENG.pdf> (date of access: 26.06.2019)

⁶ European Convention on Human Rights, Article 28.

Convention. For such an investigation to be effective, all states concerned had to create the necessary conditions⁷.

The second stage of the historical development of the ECtHR is the stage of its formation as an independent element of the supervisory mechanism of the Convention. Only after these procedures, the European Commission of Human Rights could refer the case to the Court on its findings⁸.

Its first judgment in the case of "Lawless v. Ireland"⁹ the ECtHR issued on 14 November 1960. So, its first judgment on merits in favor of the applicant was taken in the case of "Neumeister v. Austria"¹⁰ on 27 June 1968.

During this period of its work, the ECtHR adopted a total of seventeen judgments in ten cases¹¹. However, this period of the history of the ECtHR was very significant due to the fact that at that time basic procedural rules, the procedure for cases, the structure and, therefore, the style of argumentation was established and implemented in the ECtHR judgments by the Rules of Court, which retained its importance for many years.

As early as 1962, in its second judgment "De Becker v. Belgium"¹² The ECtHR has determined that it does not exercise control over the domestic law of the State party¹³.

Further, the ECtHR began ruling specifying such guarantees of Art. 6 of the Convention for a fair trial as "an independent and impartial tribunal", "presumption of innocence", "reasonable time of trial". The violated rights to freedom of information, freedom of conscience, respect of privacy, protection of property rights, and many others have

⁷ Чертов А.А. "Европейский Суд по правам человека – Развитие международного права по правам человека" (Москва, 2007) С. 27-28. // Chertov A.A. "The European Court of Human Rights - the Development of International Human Rights Law" (Moscow, 2007) P. 27-28.

⁸ Туманова Л.В. Владимирова И.А. "Защита семейных прав в Европейском суде по правам человека" (Городец, 2007) С. 19. // Tumanova L.V. Vladimirova E.A. "Protection of family rights in the European Court of Human Rights" (Gorodets, 2007), P. 19.

⁹ ECtHR judgment from 01.07.1961 (application № 332/57)

URL: <[https://hudoc.echr.coe.int/eng#%22itemid%22\[%22001-57518%22\]>](https://hudoc.echr.coe.int/eng#%22itemid%22[%22001-57518%22]>) (date of access: 26.06.2019)

¹⁰ ECtHR judgment from 27.06.1968 (application № 1936/63)

URL: <[https://hudoc.echr.coe.int/eng#%22itemid%22\[%22001-57544%22\]>](https://hudoc.echr.coe.int/eng#%22itemid%22[%22001-57544%22]>) (date of access: 26.06.2019)

¹¹ Туманов В.А. "Европейский Суд по правам человека - Очерк организации и деятельности" (Москва, изд. НОРМА, 2001) С. 4. // Tumanov V.A. "The European Court of Human Rights - Essay of Organization and Activity" (Moscow, edit. NORMA, 2001) P. 4.

¹² ECtHR judgment from 27.03.1962 (application № 214/5)

URL: <<https://www.legal-tools.org/doc/49edbf/pdf/>> (date of access: 26.06.2019)

¹³ Туманов В.А. "Европейский Суд по правам человека - Очерк организации и деятельности" (Москва, изд. НОРМА, 2001) С. 6. // Tumanov V.A. "The European Court of Human Rights - Essay of Organization and Activity" (Moscow, edit. NORMA, 2001) P. 6.

appeared on the radar of the ECtHR. Even then, the individual complaints have occupied center stage in practice adopted by the European Court. This led to significant changes in procedural rules.

The applicant (private person) received the status of a party in the process, not in a personal capacity but in the person of his representative who could be a lawyer from any state that is part of the CoE. The issue of the right of an individual applicant to apply to the Court itself became acute. However, the final solution to this issue was received slightly later.

The third stage of development of the European Court is the stage of maturity, its prevalence in the supervisory mechanism of the Convention. At this stage, the European Court had a monitoring role, but the decision on the admissibility of complaints remained within the competence of the Commission.

For the consideration of each case referred to the ECtHR a chamber of nine judges was formed, in so doing, this number necessarily included a citizenship judge, a citizen of the State party to the dispute or a judge appointed by the state "ad hoc"¹⁴.

If the complaint was declared admissible by the Commission, and all attempts to achieve a peaceful settlement did not lead to the desired result, within three months from the date of the Commission's report to the CM of the CoE, the case could be referred to the ECtHR for consideration. This became possible only if the Respondent state had previously declared its recognition of ECtHR jurisdiction as mandatory by an individual declaration to the Secretary General of the CoE.

The ruling of the ECtHR on a specific case was recognized as binding and final on the parties.

In case the complaint could not be submitted to the ECtHR, the CM separately decided by a majority of two-thirds of its members entitled to participate in the meetings of the Committee whether there had been a violation of the Convention.

Thus, at this stage, the CM also served as a judicial supervisory mechanism. This provision of the Convention gave the Respondent states the choice either to accept the jurisdiction of

¹⁴ Ad hoc is a Latin phrase meaning literally "for the present case" - refers to the representatives of states sent to another state to perform specific functions.

the ECtHR and to participate in consideration of the ECtHR complaint based on the principles of independence and impartiality or to submit to the decision of the CM¹⁵.

The fourth stage of the evolution of the European Court is characterized by a sharp increase in the number of States parties to the CoE as well as a surge in cases brought before the ECtHR and considered by it¹⁶. In the 1990s, the CoE was enlarged with seventeen new members, and at the time of the 1998 reform, it consisted of forty judges (with subsequent extension of the Court's composition). In the same year, the ECtHR ruled in one hundred six cases and the previous seven years (1990 - 1997) - about six hundred judgments¹⁷.

In 1994 Protocol No. 9 to the Convention adopted in 1990 entered into force, which was an essential step in the process of making an individual applicant (petitioner) a full legitimate participant to the judicial proceedings. From now on, individuals, non-governmental organizations or groups of individuals have the right to submit the application directly to the Court and to appear before it in person.

In the 1990s, it became evident that the organizational form of the CoE legal apparatus needed to be improved. On April 20, 1994, Protocol No. 11 on restructuring the control machinery established by the Convention was signed. The necessity and urgency of the reform were attributable to a significant increase in the effectiveness of judicial protection of human rights and fundamental freedoms, especially concerning the increasing number of appeals and the expanded composition of the CoE.

The most relevant points of the reform were the following:

- the European Commission of Human Rights was abolished, and its authority was transferred to the European Court, which alone considered the applicant's appeals within a reasonable time following their submission;
- the number of judges of the ECtHR was equated to the number of States parties to the Convention (Art. 20 of the Convention), their term of office was reduced to six years;
- the right to the individual application has ceased to be optional (Art. 34 of the Convention);

¹⁵ Чертов А.А. "Европейский Суд по правам человека – Развитие международного права по правам человека" (Москва, 2007) С. 30. // Chertov A.A. "The European Court of Human Rights - the Development of International Human Rights Law" (Moscow, 2007) P. 30.

¹⁶ Туманов В.А. "Европейский Суд по правам человека - Очерк организации и деятельности" (Москва, изд. НОРМА, 2001) С. 10. // Tumanov V.A. "The European Court of Human Rights - Essay of Organization and Activity" (Moscow, edit. NORMA, 2001) P. 10.

¹⁷ *ibid.*

- the CM of the CoE has lost its right to decide whether there has been a violation of the Convention (however, it was still entitled to supervise the implementation of the judgments of the European Court, including making recommendations concerning the execution of its judgments);
- the ECtHR began to work permanently (not in order of short monthly sessions, as before);
- the European Court has launched to form a "judicial dossier" for each accepted application¹⁸.

The fifth stage is the post-reform period. As a result of the reform of the Court, it became more accessible to applicants, strengthened its authority, the "modus operandi"¹⁹ has changed significantly. Nevertheless, the reform did not solve the problem of the increased number of applications. In 2002, the increase in the number of complaints led to the fact that the ECtHR was not able to consider all of them on time.

In 2005, the number of pending applications in the ECHR proceedings reached the level of eighty thousand (80,000) mark. During the year, no more than twenty thousand (20,000) applications were considered, and about forty thousand (40,000) applications were received. Thus, the crisis of the control mechanism occurred, and it became necessary to reform the organization of the ECtHR again²⁰.

In 2000, the former President of the ECtHR, L. Wildhaber, reported that the ECtHR was not coping with the flow of complaints and that the further reform of its activities was needed²¹.

At this time, academics, judges of the European Court, members of the CM, representatives of non-governmental organizations actively discussed the need for new reforms in the ECtHR in order to solve the problem of the Court's workload.

According to the point of the constitutionalists (the majority of the judges of the ECtHR and the members of the CM), the European Court needed special powers to reject cases that

¹⁸ Гарлицкий Л. "Реформа Европейского суда по правам человека - Текущее состояние и перспективы" (Международное правосудие, 2014) - № 2 (10), С. 3. // Garlicki L. "The Reform of the European Court of Human Rights – Current status and prospects" (International Justice, 2014) - № 2 (10), P. 3.

¹⁹ Modus operandi is a Latin phrase, approximately translated as "mode of operating".

²⁰ Туманова Л.В. Владимирова И.А. "Защита семейных прав в Европейском суде по правам человека" (Городец, 2007) С. 24. // Tumanova L.V. Vladimirova E.A. "Protection of family rights in the European Court of Human Rights" (Gorodets, 2007) P. 24.

²¹ Травников М.А. "Будущее Европейского Суда по правам человека: тупик или смена концепции" (Журнал российского права, 2002) - № 6, С. 73. // Travnikov M.A. "The Future of the European Court of Human Rights: deadlock or change of concept" (Journal of Russian law, 2002) - № 6, P. 73.

do not raise important questions for the Convention (the Court, for the sake of expediency, might not consider cases that are not very important from the point of protection of human rights).

The CM recalls and subscribes to the following remark made by the former President of the ECtHR, L. Wildhaber: "The Court's main concern is to avoid the situations in which there is an alternative, competing and potentially conflicting systems of human rights protection both within the Union and in the greater Europe. The duplication of protection systems runs the risk of weakening the overall protection offered and undermining legal certainty in this field"²².

Proponents of "individual justice" (non-governmental organizations for the protection of human rights, the PACE, as well as some MS: Belgium, Austria, Finland, Hungary, Latvia and Luxembourg) considered the introduction of new barriers to complaint-filing is unacceptable, as the primary function of the Court lies primarily in access for individuals.

This discussion resulted in a compromise formulation of the new admissibility criteria, which was worded as follows: The Court shall declare inadmissible any individual application submitted under Art. 34 if it considers that: the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal²³.

In 2000, the EMC on Human Rights commissioned the CM of the CoE to conduct a study on improving the effectiveness of the supervisory mechanism. In February, the study group was established by the CM. In November 2001, the CM approved the report of the study group and instructed the Standing Committee on Human Rights to develop concrete proposals to ensure the effectiveness of the ECtHR. In November 2003, the Standing Committee on Human Rights submitted to the CM its final report, to which the draft Protocol to the Convention was annexed.

²² Morano-Foadi S. Vickers L. "Fundamental Rights in the EU: A Matter for two Courts" (Bloomsbury, 2015) P. 88

²³ Чертов А.А. "Европейский Суд по правам человека – Развитие международного права по правам человека" (Москва, 2007) С. 36. // Chertov A.A. "The European Court of Human Rights - the Development of International Human Rights Law" (Moscow, 2007) P. 36.

The sixth stage is about finding innovative ways to reform the ECtHR. On May 13, 2004, the Protocol No. 14²⁴ was adopted to the European Convention and amended the procedure of the European Court, as well as the new criteria of admissibility - "the insignificance of damage".

This criterion has made the following changes in the activities and proceedings of the ECtHR:

1. In order to strengthen the independence and impartiality of the ECtHR judges, their term of office is extended from six to nine years, and judges may not be re-elected.
2. ECtHR judge will be able to declare individual applications inadmissible if no further case review is required. In this case, the decision to declare the application inadmissible will be final (applications which inadmissibility is visible). If the judge doubts whether the application is admissible, he/she submits it to the Committee of three judges or the GC for further proceedings. Also, while analyzing the complaints received the staff of the ECtHR Secretariat will assist the judge.
3. The Committee of three judges of the ECtHR may unanimously render not only a decision of inadmissibility but also on the admissibility and merits in cases where the issues arising concern the interpretation and application of the provisions of the ECHR and its Protocols have already been resolved in the case law of the ECtHR. The judgments of the three-judge Committees will be final. This measure is aimed at relieving the ECtHR of the obligation to regularly render similar judgments on repetitive cases, which is inconsistent with the ECtHR's role of an international judicial body²⁵.
4. There is a new criterion of application admissibility which entitles the ECtHR to declare the complaint inadmissible by establishing the insignificance of the damage to the applicant as a result of the alleged violation of the ECHR and its Protocols.
5. The CoE Commissioner for Human Rights has been granted the right to submit written comments on the case and to participate in oral proceedings in all cases pending before chambers or the GC of the ECtHR as a third party to the case. The active role of the CoE Commissioner for Human Rights during the consideration of

²⁴ URL: <https://www.echr.coe.int/Documents/Library_Collection_P14_ETSI94E_ENG.pdf> (date of access: 26.06.2019)

²⁵ Алисиевич Е.С. "Реформа Европейского суда по правам человека: новые пути решения старых проблем" (Волгоград, 2011) - № 5 (14), С. 119. // Alisiyevich E.S. "The Reform of the European Court of Human Rights: New solutions to settle old problems" (Volgograd, 2011) - № 5 (14), P. 119.

specific cases is particularly important in the identification and prevention of systemic violations in MS of the CoE, as well as cases involving any new issues related to freedoms and human rights enshrined in the ECHR.

6. The ECtHR is entitled to consider cases with the participation of representatives of the parties and to investigate all the circumstances of the case not only after the application has been declared admissible but also at any stage of the trial. Thus, the obligations of the States parties to the Convention to cooperate with the ECtHR in consideration of specific cases are being strengthened.
7. The list of competencies of the CM of the CoE has been expanded, which is now entitled to apply to the ECtHR for clarification of the already rendered judgment.

In addition, if the State party to the case according to the opinion of the CM of the CoE, evades its obligation to execute the ECtHR judgment, the CM by sending a notification to the state also has the right to send a request to the ECtHR on whether the state has violated its obligations to implement the judgments in accordance with Art. 46.1 of the Convention.

If the ECtHR responds positively to such a request, i.e.²⁶ notes the state has breached its obligation, the CM of the CoE will be able to start discussing measures that can be taken against the offending state.

Subsequently, the MS of the EU were requested to ratify Protocol No. 15 (24 June 2013) and Protocol No. 16 (2 October 2013). The first involves ratification by all MS, while the second will be sufficient for only ten countries that ratify it to enter into force.

On 1 May 2017, Protocol No. 15 was signed by the President of the RF and officially entered into force on 12 May 2017.

At the same time, preparations for much more serious steps are being carried out that will come with the accession of the EU to the ECHR. That would entail further changes in the law imposing obligations on MS²⁷.

The establishment of the ECtHR as an element of the supervisory mechanism in the sphere of human rights and freedoms was a fundamentally new phenomenon for international law.

²⁶ Id Est is a Latin expression, which translates to "that is".

²⁷ Гарлицкий Л. "Реформа Европейского суда по правам человека - Текущее состояние и перспективы" (Международное правосудие, 2014) - № 2 (10), С. 5. // Garlicki L. "The Reform of the European Court of Human Rights – Current status and prospects" (International Justice, 2014) - № 2 (10), P. 5.

The legal nature of the ECtHR is of an international legal nature. The long, nearly sixty-year period of the ECtHR is characterized by the consistent, evolutionary development of the international judicial body, and the history of the ECtHR sufficiently outlines the stages of the evolution of international law, human rights and makes it possible to identify further ways of development and improvement of this body²⁸.

2.2. Structure

The ECtHR, as noted above, carries out its activities permanently. The ECtHR consists of forty-nine judges. Judges are elected by the PACE²⁹.

According to Protocol No. 14 to the Convention, judges are elected for a term of nine years based on nominations of each State party and may not be re-elected. The term of office of a judge shall expire upon reaching the age limit of seventy.

The ECHR imposes specific requirements on judges: thus, a judge must be of the highest moral values, be recognizable as a legal authority. The judge carries out his activities without representing the interests of any state. The judges shall not hold any office incompatible with their independence and impartiality³⁰.

A judge may be removed from office prematurely only if the vast majority of judges (two-thirds) decide that such a judge is no longer in compliance the requirements³¹.

A judge may be removed from office if in the Plenary Court the other judges decide that such a judge does not meet the requirements by the majority of votes of the elected judges. Every judge shall have the right to commence the removal procedure³².

Also, it should be noted that there is a classification of judges by seniority in the ECtHR. For newly elected judges the Rules of Court establish a particular period (three months

²⁸ Петров В.Ю. "Эволюция структуры Европейского Суда по правам человека - Пробелы в российском законодательстве" (Москва, 2013) - №1, С. 55. // Petrov V.Y. "The Evolution of the structure of the European Court of Human Rights – the Gaps in Russian legislation" (Moscow, 2013) - №1, P. 55.

²⁹ URL: <<https://www.echr.coe.int>> (date of access: 26.06.2019)

³⁰ Петров В.Ю. "Эволюция структуры Европейского Суда по правам человека - Пробелы в российском законодательстве" (Москва, 2013) - №1, С. 61. // Petrov V.Y. "The Evolution of structure of the European Court of Human Rights – the Gaps in Russian legislation" (Moscow, 2013) - №1, P. 61.

³¹ Караманукян Д.Т. "Акты Европейского суда по правам человека в российской правовой системе" (Омская юридическая академия, 2013) С. 37. // Karamanukyan D.T. "Acts of the European Court of Human Rights in Russian legal system" (Omsk Academy of Law, 2013) P. 37.

³² Петров В.Ю. "Эволюция структуры Европейского Суда по правам человека - Пробелы в российском законодательстве" (Москва, 2013) - №1, С. 55. // Petrov V.Y. "The Evolution of the structure of the European Court of Human Rights – the Gaps in Russian legislation" (Moscow, 2013) - №1, P. 55.

from the date of election) during which the judge is obliged to accept cases and to take office.

The structure of the ECtHR includes the following elements:

- the GC of the ECtHR, which is composed of seventeen judges and at least three substitute judges³³;
- five Sections, which include a President, a Vice-President, several judges, a Registrar, and a Deputy Registrar;
- Chambers of nine judges are constituted from the Sections;
- Committees of three judges and are established by Section³⁴.

The Plenary Court has decided the main organizational issues of the European Court.

The Plenary Court of the ECtHR shall be convened by the President of the Court when the performance of its duties requires so under the Convention as well as at the request of one-third of the members of the Court but in any case, once a year for the consideration of administrative matters³⁵.

The Plenary Court shall elect a President and one or two Vice-Presidents, two Presidents of the Section for three years.

The procedural rules are also adopted, the Registrar and its Deputies are elected, other issues related to the organization and activities of the ECtHR are considered.

Institutionally the ECtHR is divided into five Sections formed for three years.

It should be noted that the composition of the Section shall be

geographically and gender balanced and should represent the different legal systems among the State parties³⁶.

³³ Rules of Court

URL: < https://www.echr.coe.int/Documents/Rules_Court_eng.pdf > (date of access: 26.06.2019)

³⁴ Петров В.Ю. "Эволюция структуры Европейского Суда по правам человека - Пробелы в российском законодательстве" (Москва, 2013) - №1, С. 53. // Petrov V.Y. "The Evolution of the structure of the European Court of Human Rights – the Gaps in Russian legislation" (Moscow, 2013) - №1, P. 53.

³⁵ Амплеева Е.Е. Фирсов В.В. "Практика Европейского Суда по правам человека по рассмотрению дел в отношении Российской Федерации Ч. 1. Европейская система защиты прав человека" (Санкт-Петербургский юридический институт, 2015) С. 24. // Ampleyeva E.E. Firsov V.V. "The Practice of the European Court of Human Rights on consideration of cases in respect of the Russian Federation P. 1. European system for the protection of Human Rights" (Saint Petersburg University of Law, 2015) P. 24.

³⁶ *ibid.*

Sections consist of a President (Chairman) of Section, a Vice-President, judges, a Registrar and Deputy Registrar of the Section. Judges are elected from the total number of ECtHR judges. Its Chairman heads each section.

Within the Section, the Committees of three judges are formed every twelve months. The Committee is an important element of the Court's structure responsible for the selection of cases. Based on a vote, the Committee decides on the complaints. For instance, a complaint may be declared inadmissible. In some cases, the complaint may be removed from the list of cases to be considered. The most important thing is that this decision is final³⁷.

The Chambers are also formed from Sections. They hold public hearings to decide whether an article of the European Convention has been violated. The members of the Chambers are appointed in alphabetical order by country name and following the principle of rotation. In each case, the Chamber is composed of the President of the Section and a judge elected by the Respondent state. If the judge elected by the Respondent state is not a member of the Section, he/she shall sit as a member of the Chamber "ex officio"³⁸.

In the system of structural units of the European Court, the Chambers occupy a very prominent place, because they consider the majority of cases drafting legal positions on them. Furthermore, these positions are formalized in the final case judgment.

The judgment of the Chamber may be appealed to the GC within three months after it has rendered the initial judgment, after which the decision becomes final for the Respondent state.

The GC consists of seventeen judges and at least three substitute judges³⁹. It is composed of the President, the Vice-President, and the President (Chairmen) of the Sections. Also, in turn, there are two groups of judges, formed in such a way that the composition is as geographically balanced as possible and reflects the legal systems of the States parties to the Convention. Also, there are two groups of judges formed in such a way that the

³⁷ Петров В.Ю. Эволюция структуры Европейского Суда по правам человека // Пробелы в российском законодательстве. - 2013. - № 1. - С. 54. // Petrov V.Y. "The Evolution of the structure of the European Court of Human Rights – the Gaps in Russian Legislation" (Moscow, 2013) - №1, P. 54.

³⁸ Ex officio is a Latin phrase meaning "by virtue of the office"

³⁹ Петров В.Ю. Эволюция структуры Европейского Суда по правам человека // Пробелы в российском законодательстве. - 2013. - № 1. - С. 59. // Petrov V.Y. "The Evolution of the structure of the European Court of Human Rights – the Gaps in Russian legislation" (Moscow, 2013) - №1, P. 59.

composition of the GC shall be geographically and gender balanced and should represent the different legal systems among the State parties.

The GC considers cases of inter-State and individual applications only when the Chamber of nine judges transfer its jurisdiction to it. This often happens if the case in question concerns specific or outstanding issues as well as human rights and freedoms, which are not reflected in the case law of the ECtHR or if the potential judgment may lead to conflicts with the existing case law of the European Court itself. In exceptional cases, the GC may consider cases referred to it at the request of one of the parties involved in the proceeding. Moreover, the judgment of the Chamber rendered in this specific case does not automatically enter into force since the state's request for review. The GC shall also be convened to consider requests submitted to it by Art. 47 of the ECHR for the adoption of an Advisory opinion⁴⁰.

⁴⁰ *ibid.*

2.3. Concept of the proceeding

The proceeding before the European Court is the activity of its participants aimed at establishing the fact of violation of the Convention with the imposition and the execution of the appropriate legal judgment as well as resolving all possible issues closely related to this activity⁴¹.

The proceeding before the European Court consists of two groups of procedures:

- 1) consideration of the case;
- 2) consideration of procedures related to the case.

First, the consideration and resolution of cases on applications itself.

Second, activities that are not directly related to the consideration of applications: adoption of an Advisory opinion, establishing the fact of violation of the obligation by the Respondent state to comply with the judgment rendered in respect of it, interpretation of initial judgments.

The procedural mechanism (the mechanism of procedural regulation) in the ECtHR is a system consisting of those elements that interact each time when resolving cases. Such elements are the activities of the parties to the proceedings, procedural acts, procedural relations, the regulatory framework for their functioning, and the ultimate purpose of this process⁴². These elements are complex formations. Thus, for instance, the normative framework is applied in each specific case. However, the rest of the existing rules is used in part based on a specific issue. Procedural relations are being developed gradually (by stages), their subjective part is complex. Procedural acts, in turn, are the result of a set of legal facts. The process is united by a single goal (objective). At the same time, the process is not homogeneous and consists of relatively separate stages that have their own goals.

Exploring and revealing the concept of the process before the European Court, it should be noted that though it is a capacious concept but not limitless.

⁴¹ Лукьянова Е.Г. "Теория процессуального права" (Москва, 2003) С. 223. // Lukyanova E.G. "Procedural Law in Theory" (Moscow, 2003) P. 223.

⁴² Игнатенко Г.В. Тиунов О.И. "Международный юридический процесс" (Москва, 2009) С. 107-111 // Ignatenko G.V. Tiunov O.E. "International Procedural Law" (Moscow, 2009) P. 107-111.

The scope of the concept of process in the European Court is determined primarily by those elements that were mentioned above: the parties to the proceedings, its purpose, procedural acts, procedural relations and the regulatory framework for their functioning.

Concerning the normative framework, its boundaries are not limited to the existing normative material. This is because the rules governing proceedings before the European court are not the only element of the system of proceedings before the European Court and because the existing rules may be replaced, supplemented, or amended.

Elaborating the concept of process in the European court is an essential task because it is the main scientific, legal structure, the core of the theory of the European court. Therefore, the concept of "process in the European court" will make it possible to complete the set goals, to explain systematically and in every detail those qualitative characteristics which are inherent to the activities of the European court for the consideration of cases as well as to the issues closely related to the consideration of applications⁴³.

When identifying the concept of process in the European court, one should consider several points.

The process in the European court is a unique legal procedure which is a kind of a broader concept - legal process. Therefore, in order to have a theoretical basis for the reliable conclusions, it is necessary to consider the provisions of the theory of the legal process as a system of knowledge about a way broader general concept⁴⁴.

The process in the European court has its form, which is a kind of a legal structure or model. This model is based on the rules governing this process. Therefore, procedural rules are included in the subject of the work.

Thus, for the purposes of the study of the utmost interest are such concepts as the process in the European court, its purpose and the rules based on which the process is formed and operates, the legal relationship in which it is implemented and its other characteristics.

To determine the nature and purpose of the process as closely related elements, it is necessary to make a note. As a kind of legal process, the process in the European court has

⁴³ Хабриев Т.Я. "Эффективность Законодательства и современные юридические технологии" (Москва, 2009) С. 402-406. // T.J. Khabriev "Efficiency of legislation and modern legal technologies" (Moscow, 2009) P. 402-406.

⁴⁴ Мелехин А.В. "Теория государства и права – Учебник" (Москва, 2007) С. 399. // Melekhin A.W. "Theory of States and law – Textbook" (Moscow, 2007) P. 399.

its purpose, which is derived from the material legal relations. Material legal relations, as is well known, are implemented on the basis of the substantive provisions of the Convention and its Protocols - they are enshrined in articles on rights and freedoms. Material legal relations are continuously realized. In other words, the Convention in the MS of the CoE establishes the mutual rights and obligations of the MS and the person under its control.

2.4. Characteristics of the proceeding

The subject of the research is, first of all, the proceeding itself, procedural rules and their sources. The nature and main characteristics of procedural rules are determined by the nature of the activities they regulate. The activities carried out by the European Court are of a procedural nature. In this sense, they are similar to those carried out by national courts. Most of the Russian legal scholars identify some specific features of procedural activity listed below:

- 1) procedural activity is only present among those bodies which are endowed with special powers and are aimed at carrying out protective functions;
- 2) procedural activity of the competent authorities is a special sphere of legal activity;
- 3) procedural activity differs in specifics of its tasks;
- 4) procedural activity has its stages;
- 5) a crucial point in the procedural activity is the presence of evidence which is so necessary to establish specific facts and circumstances, their study and the correct assessment in order to establish the objective truth in the case;
- 6) procedural activity is characterized by multi-subject: along with the body carrying out law enforcement within the framework of the relevant public attitudes, there are other persons – participants in the evidentiary process;
- 7) some individual stages of the procedure differ in the specifics of the external forms of expression, their particular presentation in the procedural acts concerning the procedures that are instituted and conducted before the court⁴⁵.

Indeed, the process before the European Court has a protective nature. It aims at ensuring respect for the rights and freedoms enshrined in the Convention and its Protocols. Legal procedure, in contrast to the material, can only occur in the case of alleged violations of substantive rules.

The specificity of the rules governing the process in the European court lies in the following characteristics.

⁴⁵ Фаткуллин Ф.Н. "Общие проблемы процессуального доказывания" (Казань, 1976) С. 55. // Fatkullin F.N. "General problems of procedural evidence" (Kazan, 1976) P. 55.

Their subject is social relations which they regulate. Exceptional nature of the provisions of procedural rules which are addressed primarily to the parties of the process. The court may deviate from them in exceptional cases.

The rules are procedural what means that they describe not only the actions of the participants in the process as well as the manner, order, and sequence in which they appear but also the form of consolidation of the results of these actions.

The process in the European Court is implemented through the framework of legal relations. A classic one definition for legal relations is a type of social relations arising, terminated and regulated by law, the subjects of which are bound by rights and obligations. Legal relations, as a form of implementation of the process before the European Court, arise on the basis of procedural rules, the legal relationship of the participants in this process.

Participants in the proceedings before the European Court are represented by the following groups of subjects:

- 1) The Court is represented by different compositions (individually or collectively – Committee, Chamber, or GC). Initially, the Secretariat acts on behalf of the Court;
- 2) The Parties. The complainant may be represented by a natural person, organization, or group of persons. The State may also file a complaint. The second party is the Respondent state. The EU may also be the respondent;
- 3) The third party which may enter into the case and factually has the only right to make observations on the merits of the complaint. The third party to the case may be the State, a non-governmental or intergovernmental organization, the High Commissioner for Human Rights of the CoE;
- 4) At the final stage of the process, a body facilitating the execution of the judgment acquires – the CM of the CoE;

The basis for initiation for procedural relations is the fact of filing a complaint. Their ending is related to the fact of execution of the judgments of the European Court.

The rules governing the process in the European Court are concentrated both in the Convention, the Regulation and also in the legal position of the Court formulated in its judgments.

Legal relations in the framework of which the process is carried out in the European Court may arise as a result of a possible violation of the Convention and end with the execution of the judgment of the European Court. In the framework of the legal process, the

possibility of recognizing the violation of the rights of the person and their restoration is implemented.

The process before the European Court is a type of legal process with all the consequences: it has the characteristics inherent in the legal process in general.

The legal process is based on the law. It is characterized by sanctions, including procedural ones⁴⁶. The grounds and procedure for the implementation of the rights of the parties, as well as the European Court, is established by the rules. Violation of these norms entails certain legal consequences. For example, failure to comply with the terms of filing a complaint entails negative consequences for the applicant in the form of an inability to initiate proceedings and the rejection of his complaint by the Court.

The process in the European Court is accompanied by the task of qualifying for a violation of the Convention by a MS, making an appropriate judgment and controlling its implementation.

In addition, the process takes place in a certain sequence, involves the establishment of factual circumstances and is implemented within the framework of tripartite legal relations.

⁴⁶ Панова И.В. "Актуальные проблемы административного процесса в Российской Федерации" (Екатеринбург, 2000) С. 34-35. // Panova I.V. "Actual problems of the administrative process in the Russian Federation" (Yekaterinburg, 2000) P. 34-35.

3. THE ENFORCEMENT OF THE ECtHR JUDGMENTS

3.1. Problems of Enforcement of the ECtHR Judgments in Russia

For a long time, the issue of non-execution and long-term execution of the ECtHR judgments against Russia remains relevant.

The average duration of execution of the ECtHR judgments in Russia is 9.7 years⁴⁷. The problems of implementation of the ECtHR judgments have been covered in detail in the report on the longer-term future of the Convention System published in December 2016 by the Steering Committee of Human Rights of the CoE⁴⁸. Time usually required to solve a particular case is about four years. Russia was identified among the MS which have not implemented the ECtHR judgment for the longest time: the average term of execution of the ECtHR judgment in Russia is about ten years. Such a long non-execution is a challenge to the authority of the Court itself, and as a consequence, to the entire legal system based on the Convention. Thus, the judgments of the ECtHR are not implemented, and if implemented are of a compensatory nature.

For example, the ECtHR ruling on the cluster of applications: "Timofeyev v. Russia"⁴⁹, "Ilyushkin and others v. Russia"⁵⁰, "Gerasimov and others v. Russia"⁵¹ which include about one hundred and fifty Court judgments. These applications have one thing in common: they were all related to "red tape"⁵² in the performance of state obligations in kind.

Nikolai Timofeyev was remanded to a psychiatric hospital for spreading anti-Soviet propaganda in 1982. After four years, he was released because of recovery. However, until 2002, Timofeyev has been unsuccessfully seeking compensation for his property that was confiscated. Eventually, Timofeyev appealed to the ECtHR, and his rights were found violated.

⁴⁷ URL: <<https://www.echr.coe.int/Pages/home.aspx?p=reports&c=>> official website of the ECtHR / statistics (date of access 26.06.2019)

⁴⁸ URL: <<https://www.coe.int/en/web/portal/home>> official website of the CoE (date of access 26.06.2019)

⁴⁹ ECtHR judgment from 23.01.2004 (application № 58263/00)

URL: <<http://sutyajnik.ru/rus/echr/judgments/timofeyev.htm>> (date of access 26.06.2019)

⁵⁰ ECtHR judgment from 17.07.2012 (application № 5734/08)

URL: <<http://europeancourt.ru/tag/ilyushkin-and-others-v-russia/>> (date of access 26.06.2019)

⁵¹ ECtHR judgments from 01.10.2014 (application № 29920/05)

URL: <<https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-145212&filename=001-145212.pdf>> (date of access 26.06.2019)

⁵² Due to the Cambridge Dictionary it is an official rule or process that seems unnecessary and delay results.

According to the RBK Group "the Ministry of Justice of the RF noted that, on April 21, 2010, the State Duma adopted the Federal law "On compensation for violation of the right to legal proceedings within a reasonable time"⁵³ which was developed in pursuance of another judgment of the ECtHR.

This Federal law provides for the payment of compensation for the existing inefficiencies in the investigation and consideration of cases but does not consider cases when it comes to long-term non-performance in kind.

So far, the judgment of the ECtHR on the application of Murad Garabayev⁵⁴ remains unenforced. In 2007, the ECtHR upheld his appeal and found a violation of his rights in relation to extradition. Garabayev obtained Russian citizenship in 2002 but, a few months later, was detained at the request of the Attorney General of Turkmenistan who demanded his extradition. Garabayev was accused of embezzlement on a particularly large scale from the accounts of the Central Bank of Turkmenistan and the withdrawal of funds to the account in the RF.

Despite the existence of Russian citizenship, confirmed by an official document (Russian passport), a month after the arrest he was transferred to Ashgabat. The existence of confirmed Russian citizenship was to exclude extradition to another state. A year later, after numerous judicial proceedings, Garabayev was returned to Russia.

In March 2014, the Ministry of Justice of the RF elaborated the amendments to the Code of the Criminal Procedure. The amendments were meant to improve the extradition procedure and contained the terms of maximum detention for detainees, the extension conditions as well as cases of excluding extradition, including the risk of being tortured in the territory of a foreign state. However, the Prosecutor General's Office opposed the amendments referring to the fact that the Plenum of the Supreme Court of the RF intentionally readjusted the practice of extradition and issued the ruling with interpretations.

The judgment of the ECtHR on the application of the couple Ageyevs⁵⁵ rendered in April 2013 was also not executed. In 2009, they were deprived of parental rights after their infant

⁵³ URL: <http://www.consultant.ru/document/cons_doc_LAW_99919/> (date of access 26.06.2019)

⁵⁴ ECtHR judgment from 07.06.2007 (application № 38411/02)

URL: <<https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-2027556-2141648&filename=003-2027556-2141648.pdf>> (date of access 26.06.2019)

⁵⁵ ECtHR judgment from 18.04.2013 (application № 7075/10)

adopted son Gleb was hospitalized with severe burns and bruises. The child inadvertently spilled boiled water on himself. The spouses took their child to the burn center where, in addition to the body burns, there have been identified other symptoms such as brain injury, hematomas, bruises. The doctors concluded that the family mistreated the child. This diagnosis led to the legal proceedings and the removal of the children previously adopted by Ageyevs as well as other negative consequences: unwarranted criminal prosecution, dissemination of calumnious information detrimental to the honor and dignity of the spouses by the mass media and the abolition of adoption in respect of Gleb and Polina Ageyev. Ageyevs sought the return of their children through the ECtHR, and the Court found the rights of adoptive parents violated⁵⁶.

To implement the judgment of the ECtHR, in November 2013, the State Duma introduced a bill that provided for amendments to the Family Code of the RF. The bill proposed to restore the rights of adoptive parents in court if they have changed their behavior, lifestyle or there are no more grounds for cancellation of an adoption. Nevertheless, this law was never adopted.

In this case, the problem is the absence of a deadline for the bill's passage in the State Duma until the final reading.

The binding nature of the execution of the ECtHR judgments follows from the provisions of the Constitution of the RF, Art. 46 of the ECHR, Art. 26 of the Vienna Convention on the Law of Treaties enshrining the principle - "pacta sunt servanda"⁵⁷.

Art. 46.1 of the ECHR states the High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties".

Art. 15 (4) of the Constitution of the RF enshrines the rule according to which "the universally-recognized norms of international law and international treaties and agreements of the RF shall be a component part of its legal system. If an international treaty or

URL: <[https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-118602%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-118602%22]})> (date of access 26.06.2019)

⁵⁶ Агальцова М.В. Бушев А.Ю. Воскобитова М.Р. Российский ежегодник Европейской конвенции по правам человека (Москва: Статут) вып. 2: "Автономное толкование Конвенции и судейский активизм", 2016, С. 137. // Agaltsova M.V. Bushev A.J. Voskobitova M.R. Russian year book of the European Convention on Human Rights (Moscow: Statute) ed. 2: " Autonomous interpretation of the Convention and judicial activism", 2016, P. 137.

⁵⁷ Pacta sunt servanda is a Latin phrase meaning literally "treaties shall be executed".

agreement of the RF fixes other rules than those envisaged by law, the rules of the international agreement shall be applied".

As problems of execution of judgments of the ECtHR in Russia, attention should be drawn to the following:

1. The lack of quality legal translation of the ECtHR judgments.
The judgments are posted on the ECtHR website in the official languages of the Convention - French and English. Russian translations do not have the status of official ones. Some scholars offer such a solution to the situation as the creation of a special website that will be responsible for posting the ECtHR resolutions in the official translation. This measure will contribute to the more frequent use of the ECtHR practice (case law) by Russian courts⁵⁸.
2. There is no specific treatment for the interaction of the authorities and the allocation of responsibilities for the execution of the ECtHR judgments in the Russian legal system. As a result, efforts of their implementation are not coordinated, and the burden of responsibility for the execution falls on the shoulders of the legislative authority.
3. The absence of state responsibility for non-execution of the ECtHR judgments and the lack of an executive mechanism that could force the state to implement the ECtHR judgments. The RF, as the state itself, has not established a control mechanism to monitor the implementation of international judicial acts.
4. The reluctance of the courts to enforce the judgments of the ECtHR or the partial implementation⁵⁹.

⁵⁸ Сапожников Н.В. Проблемы исполнения решений европейского суда по правам человека в гражданском судопроизводстве (Марийский юридический вестник № 4 – 2015) С. 131. // Sapozhnikov N.V. Problems of execution of Judgments of the European Court of Human Rights in civil proceedings (Mari journal of law № 4 – 2015) P.131.

⁵⁹ Рехтина И.В. Постановления Европейского суда по правам человека как фактор, обуславливающий динамику гражданского процессуального законодательства России (Журнал "Современное право" № 3 – 2011) С. 86. // Rekhtina I.V. Judgments of the European Court of Human Rights as a factor determining the dynamics of the civil procedural legislation of Russia (Journal "Modern law" № 3 – 2011) P. 86.

3.2. Role of the CC of the RF in the Enforcement of the ECtHR – Markin case

The problem of enforcement of the ECtHR acts is closely related to the activity of the CC of the RF, the body which monitors constitutionality and, at the same time, is the country's national human rights institution with authority for the recognition of such provisions of the law which are inconsistent with the Constitution. That typically entails the abolition of all relevant legislative provisions. Also, the CC of the RF interprets the Constitution of the RF, renders determinations which by their status are virtually rules of law as they compulsorily guide all state bodies in the territory of Russia.

The CC of the RF has begun making references to the ECtHR since around the middle of the 1990s. Before ratifying the Convention, the Russian CC had already positioned itself as an institution providing execution for ECtHR decisions, including general measures on the violation of rights due to the shorts of legislation⁶⁰. In fairness, over the last ten years, there has been a trend reflected in severe contradictions between the positions of the CC of the RF and the ECtHR.

One of the most striking examples of tensions between the ECtHR and the CC of the RF became the judgment in the case of the Russian serviceman Konstantin Markin⁶¹.

⁶⁰ L. Malksoo, W. Benedek, *Russia and the European Court of Human Rights* (European Inter-University Centre for Human Rights and Democratisation) (p. 94). Cambridge University Press.

⁶¹ ECtHR judgment from 22.03.2012 (application № 300078/06)

URL < <http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-109868&filename=001-109868.pdf> > (date of access 26.02.2019)

3.2.1. Merits of the case

As a military serviceman, Konstantin Markin, an officer of the Russian Armed Forces remained with two children after the divorce, one of whom was barely a few months old. Under the circumstances, Markin had to devote all his free time to children, which meant the need for parental leave. Thus, the performing of official duties was temporarily and reasonably impossible for Markin.

Markin sent an urgent appeal to the commander of the military unit in which he served with a request for parental leave until the child had reached the age of two and was denied.

Later, K. Markin was granted an additional three months leave, but the granting order was soon canceled, as Markin failed to provide the required documents that would confirm his right to parental leave.

Subsequently, Markin appealed to the garrison military court for protection of his rights, which also denied his application. The appeals court upheld the said decision regarding paragraph 13 of Art. 11 of the Federal law "On the Status of the Military Personnel"⁶² according to which parental leave is granted only to the female military personnel.

Markin lodged a complaint with the ECtHR and the CC, whereas the complaint to the CC was filed after he first submitted it to the European Court. After applying to the ECtHR, Markin was granted the required parental leave and financial compensation by order from the commander of the military unit. However, the CC rejected his complaint citing the unique nature of military service and the voluntary waiver of military personnel of a number of rights.

In the CC's view, the ban on the provision of parental leave is constitutionally justified and proportional to legitimate purposes since the defense of the fatherland would be impossible if the military on a massive scale asked for leave to care for a child. After all, according to the CC of the RF, the contested measure was an element of special protection of female military personnel⁶³.

⁶² URL: <http://www.consultant.ru/document/cons_doc_LAW_18853/> (date of access 26.02.2019)

⁶³ Коротеев К.Н. Конфликт, которого нет - Комментарий к решению Большой Палаты Европейского суда по правам человека по делу "Константин Маркин против России" (Сравнительное

3.2.2. Chamber's of the ECtHR position

The Chamber of the ECtHR found a violation of Art. 14 of the Convention along with Art. 8 ("prohibition of discrimination; right to respect for private and family life")⁶⁴, in the Markin v. Russia case. In so doing, the Chamber did not agree with the CC of the RF which ruled that the difference in the treatment of fathers and mothers on issues related to granting them parental leave can be justified by the special role of mothers in the upbringing of children.

First, the Chamber recognized that the state can no longer rely on the broad margin of discretion for different treatment of fathers and mothers in addressing the issue of parental leave: "the reference to the traditional perception of women as essentially caring for children may not serve as a sufficient justification in refusing the fathers in the right to leave for child care, if they so wish"⁶⁵.

Secondly, noting that states have only a narrow margin of discretion for different relations arising in the sphere of private and family life and noting the fact that only particularly compelling reasons can justify it, the Chamber decided that the Government of the RF did not provide for sufficient arguments, and the reasons of the CC of the RF on the need to maintain operational (combat) readiness of the Russian Armed Forces and national security of the RF, in general, being a legitimate purpose, however, requires control of proportionality.

Besides, the Chamber rejected the argument of the CC of the RF on the fact that the mass requests of servicemen for parental leave will weaken the operational readiness and effectiveness of the Russian Armed Forces because there was no evidence base (expert or statistical assessment) on the significance of the number of such personnel in the case under consideration, and the CC of the RF took its decision based simply on assumptions.

In this case, the Chamber confirmed that gender biases could not be a justification for differences in treatment, nor can they be biases about race, ethnicity, or sexual orientation

конституционное обозрение № 4 – 2012) С. 123. // Koroteev K.N. Conflict that does not exist - Commentary on the judgment of the Grand Chamber of the European Court of Human Rights in the case of Konstantin Markin v. Russia (Comparative constitutional review № 4 – 2012) P. 123.

⁶⁴ URL: <<https://rg.ru/2013/12/07/reg-szfo/sud.html>> (date of access 09.07.2019)

⁶⁵ECtHR, Case No. 30078/06, Konstantin Markin v. Russia, First Section Judgment, 7 October 2010.

Moreover, the Chamber of the ECtHR was struck by the alternative the CC had proposed: either take care of children or resign from the Armed Forces.

The Chamber noted that male military personnel are forced to make a difficult choice that is not faced by female personnel and which is complicated by the specificity of military service which makes it not easy for officers to integrate into the civil society where it is difficult for them to find roles which adequately reflect their professional experience and seniority.

The Chamber recognized that the Respondent state had not given any reliable and sufficient reasons justifying the difference in treatment between fathers and mothers, and recommended to eliminate that discrimination against male military personnel by amending the current legislation⁶⁶.

The Chairman of the Constitutional Court in Russia, Valery Zorkin, did not like so direct a recommendation by the ECtHR, considering the proposal of specific methods of implementation rather the business of the CM of the CoE⁶⁷.

⁶⁶ L. Malksoo, W. Benedek, Russia and the European Court of Human Rights (European Inter-University Centre for Human Rights and Democratisation) (p. 17). Cambridge University Press.

⁶⁷ Зорькин В. "Предел уступчивости" Российская газета, 29 октября 2010 // Zorkin V. "Concession limit" Rossiiskaya gazeta, 29 October 2010, URL: <<https://rg.ru/2010/10/29/zorkin.html>> (date of access 09.07.2019)

3.2.3. GC's of the ECtHR position

Before the consideration of the case by the ECtHR, the representative of the RF appealed for the transfer of the case to the GC, and the application was granted.

The GC upheld the Chamber of the ECtHR on specific grounds⁶⁸.

First, the GC rejected the Russian Government's references to the researches from which the Government concluded a special bond between mothers and young children.

On the contrary, the GC recognized that with respect to parental leave, fathers and mothers are in a comparable position but the absence of a right to leave to care for a child of male military personnel, unlike female military personnel and men not serving in the military service disguises differences in treatment and, therefore, points to the applicability of Art. 14 of the Convention.

Second, while confirming the fact that States parties to the Convention have a broad margin of discretion with regard to national protection, the GC still pointed out that, with regard to the right to respect for private and family life, differences in the treatment of military personnel require "particularly serious reasons", the proportionality of restrictions on their rights to national security and operational readiness should be justified by concrete examples.

Third, turning to the control of proportionality, the GC confirmed that States could not rely on traditional perceptions of the social roles of men and women to justify differences in treatment. Therefore, the GC found untenable the argument of the Russian Government that the contested difference in treatment was aimed at correcting the actual inequality between men and women: the concept of "positive discrimination" was misunderstood by the Russian Government which confused it with gender stereotypes detrimental to women's careers and men's family life.

Fourthly, the GC rejected the arguments of the Russian Government on weakening the defense capability by providing the applicant with parental leave. The Government of the RF did not provide the GC with any researches or evidence which could show the number of soldiers ready to take leave to care for a child at any given moment.

⁶⁸ URL: <<http://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-109868&filename=001-109868.pdf>> (date of access 09.07.2019)

Fifthly, the GC observed the severity of Russian legislation that does not allow male military personnel under any circumstances, even exceptional, to get a three-year parental leave and does not allow any assessment of specific circumstances in specific cases.

Sixth, the GC recognized that states might restrict the right of the serviceman for leave if justified by specific circumstances such as a position in the military hierarchy, rare technical qualifications or direct involvement in military operations.

However, while controversial in Russia, the Markin case allowed the ECtHR to make substantial progress in its jurisprudence on gender equality with regard to parental leave also for servicemen⁶⁹.

⁶⁹ L. Malksoo, W. Benedek, *Russia and the European Court of Human Rights* (European Inter-University Centre for Human Rights and Democratisation) (p. 394). Cambridge University Press.

3.2.4. Outcome of the Case

The GC did not approve the approaches of Russian constitutional judges. The reason for the strong criticism of the CC by the Chamber, according to many, was that the Russian Government had not provided the ECtHR with valid arguments in the case. Thus, the Chamber, in order to justify its decision, had to analyze the determination of the CC of the RF while factually performing the functions of the respondent.

In the case of "Konstantin Markin v. Russia" the Russian Government was granted a second chance to present evidence about the potential threats to national security in the case when the applicant uses the leave to care for a child. The state's inability to provide the necessary evidence for two times has only reaffirmed the Court's conclusion that the evidence does not exist.

The CC of the RF condemned the decision of the Chamber predominantly for the fact that it allegedly interfered in the internal affairs of Russia, exceeded delegated powers by virtue of international treaties. Criticism by the Chamber of the decision of the CC of the RF is not a violation of any applicable law, including the Constitution of the RF. The criticism of the ruling of the CC of the RF by the Chamber is not a violation of any applicable law, including the Constitution of the RF.

Despite the desire of many constitutionalists, the ECtHR does not reserve any special status in the consideration of cases for national CC of MS.

Any special status of national CC would be a violation of the equality of states because there is no special constitutional jurisdiction in most of them. Moreover, the Convention is prohibited from being violated by any MS's authority and if the CC once violated it, the state could not be exonerated of responsibility. Therefore, the only possible approach adopted by the ECtHR is to consider the decisions of the national CC as a fact.

By virtue of the principle "pacta sunt servanda" of international law, a state cannot invoke national rules, even constitutional, to substantiate a non-performance of the international treaty.

The Constitution of the RF does not provide for the absolute hierarchical priority of rulings of the CC of the RF over international treaties.

Indeed, in the second sentence of Art. 15 (4) of the Constitution of the RF it is said about the priority of international rules of law over national laws⁷⁰.

Art. 125 (2), paragraph (d) of the Constitution of the RF allows the national CC to consider the constitutionality of international treaties that have not entered into force which indicates the Russian authorities may not refer to the rulings of this body (the CC) to justify non-compliance with international treaties not only by virtue of international law but also by virtue of the Constitution of RF.

Art. 17 (1) of the Constitution provides for a special status for the rules of the international human rights law: rights are protected and guaranteed not only in accordance with the Constitution of the RF but also in accordance with generally recognized principles and rules of international law⁷¹. Even if we attach particular importance to the absence of the reference to international treaties referred to in Art. 15 (4) in Art. 17 of the Constitution of the RF, there can be still found "pacta sunt servanda" and "prohibition of discrimination" among the generally recognized principles and rules of international law.

For these reasons, there is no real conflict between the CC of the RF and the ECtHR, there are only violations of the Convention lawfully established by the ECtHR.

It is important to mention that at the court hearing the Russian Government before the GC of the ECtHR seemed quite reasonable and did not dispute the interference in internal affairs or violation of sovereignty: they would be rejected.

The GC issued the final verdict on March 22, 2012, where it upheld the original decision and increased Markin's total award to 6,150 Euros⁷².

⁷⁰ If an international treaty or agreement of the Russian Federation fixes other rules than those envisaged by law, the rules of the international agreement shall be applied.

⁷¹ In the Russian Federation recognition and guarantees shall be provided for the rights and freedoms of man and citizen according to the universally recognized principles and norms of international law and according to the present Constitution.

⁷² URL: <<http://www.corteidh.or.cr/tablas/r29628.pdf>> (date of access 26.06.2019)

4. CONCLUSIONS

Summarizing the results of the thesis I will draw some conclusions.

The ECtHR became the first international court. Its establishment has mainly resulted from the need to protect human rights enshrined in the ECHR. The inability to restore the violated rights enshrined in the Convention would make it a formal declaratory instrument.

A brief analysis of the history of the ECtHR has led me to the conclusion that throughout its historical development, this intergovernmental body its institutional framework, paperwork is continuously evolving.

As a result, procedures related to the application to the ECHR were facilitated, the application process and the period for consideration of appeals to the ECHR was progressed, the number of pending complaints was decreased which in the end demonstrates the effectiveness of the ECHR's activities in the field of human rights protection.

Also, it is fair to note that as a result of the changes in the institutional framework and the procedure of paperwork in the ECHR there has been significantly shortened the amount of time taken by judges for inadmissible complaints.

The possibility of considering cases without the applicant's personal involvement is, without any doubt, one very positive aspect. It obviously saves time and minimizes the costs of applicants.

The research undertaken in this work covered the identification of problems to implementation of ECHR's judgments in the territory of RF. The main problem that remains acute for decades is the problem of non-execution of the ECHR's judgments in Russia.

There can be no doubts in binding nature of these acts, it follows from the Constitution of the RF, the fact of Russia's accession to European Convention on Human Rights and national legislation of Russia.

The state is obliged to ensure the guaranteed right of citizens to judicial protection with the appeal to bodies of supranational jurisdiction, including under the Convention for the Protection of Human Rights and Fundamental Freedoms.

This implies the obligation of the state to do its utmost regarding the organization of enforcement of the ECHR's decisions. The derogation from the binding nature of its regulations is unacceptable.

Meanwhile, there are frequent cases in Russia when the enforcement of ECtHR judgments is limited to monetary compensation for persons the violation of whose rights has been officially recognized by the ECtHR.

A significant reason for the problem of non-execution of the ECHR judgments is the lack of serious attitude of Russian judges to the need for an application not only the Russian legislation

when making judicial acts to apply but also the legal positions reflected in judgments of the ECHR on cases similar to the considered in Russian courts. As we can see, the lack of incentives for the Russian judges to study the judicial practice of the ECHR is still a problem.

Also, another reason is the lack of an established procedure for the enforcement of ECHR decisions in federal law in Russia.

One of the most significant problems that do not allow Russian citizens, applicants, to the ECHR to achieve a real restoration of violated rights is the non-execution of ECHR decisions or a long period of execution of these decisions.

In order to change the situation related to the non-execution or long period of execution of ECHR decisions, the legislator should be recommended to adopt its Federal law, the rules of which should be defined as follows:

- the order of publication of decisions of the ECHR in Russia;
- the legal status and place of the ECHR decisions in the system of Russian law sources;
- the nature of obligation for all public authorities established in the RF;
- the procedure of execution of decisions of the ECHR depending on the nature of the case.

If the case concerns the payment of compensation, then an established procedure stipulates the manner on granting these citizens to whom the payment was awarded by the decision of the ECHR.

If it is necessary to make an amendment to the law of the RF for the execution of the ECHR decisions, the legislator should define the order in which it adopts such a law.

Particular attention was drawn to the role of the CC of the RF in the enforcement of ECtHR decisions.

It should be noted that this issue has acquired a political character.

The increased role of the CC of the RF, its attainment of huge powers for decision-making on the non-execution of a specific decision of the ECHR in Russia can be perceived as non-binding judicial acts of the ECHR in Russia, as the deviation from Russia's obligations to comply with the ECHR and in the end can cause Russia's withdrawal from the CoE.

It should be noted that this is how the changing role of the CC of the RF in relation to ECHR decisions is interpreted in a number of publications in the media and even in the academic writings of some political scientists.

At the same time, the new powers of the CC of the RF should not be taken simplistically.

Russia did not refuse to implement the ECHR decisions. Russia did not refuse to comply with the ECHR decision. However, given the need to ensure the human rights enshrined in the Convention and the impact of international law on the Russian legal system should not be allowed to extend this influence to the Russian Constitution and its sovereignty.

It follows that in case of a conflict between the provisions of the ECHR decisions and the Constitution of the RF, priority should be given to the basic law of the RF - the Constitution.

Execution of decisions of the ECHR may not involve changes to the Constitution

The RF, despite the fact that the European Convention, ECHR decisions based on the meaning of Part 4 of Art. 15 of the Constitution are part of the legal system of the RF.

Otherwise, it could mean the possibility of arbitrary interference of the international court of justice in the internal affairs of Russia, its powers similar to the powers of the legislature which would undoubtedly mean a weakening of the sovereignty of the state.

Thus, the empowerment of the CC of the RF with the solution on issues of enforceability of judgments of the ECHR was objectively necessary.

At the same time, the research on the role of the CC in executing acts of the ECHR in relation to Russia, allows us to note that it is impossible to completely exclude the situation

when many decisions of the ECHR will have to go through a new judicial entity before they are executed and, in so doing, there is a great possibility of non-execution of the decision of the ECHR in terms of taking individual and general measures aimed at ensuring the implementation of the Convention (if the CC of the RF decides that such a decision of the ECHR cannot be executed, it is not enforceable in this part).

It appears from this statement that the need for further improvement of the Federal constitutional law on the CC of the RF as well as a clear definition of cases in it when the ECtHR decision must be mandatory executed, the restoration and protection of what human rights under no circumstances can be put on a level below the interests of the RF.

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ABSTRACT

Does Russia belong to the European human rights protection system? Does Russia enforce the acts of the European Court of Human Rights, and to what extent? Why has there been a human rights gap over the last decades?

In this scientific research, the author examines the issues of legal relationship and interaction between Russia and the European Court of Human Rights on the basis of systematization of the historical development of the organization and the case study. The author attempts to figure out the solution to the stormy relationship with the Strasbourg Court by formulating legislative proposals and giving other recommendations.

Drawing on the practice of the European Court of Human Rights and the practice of national courts, it is stated that it is essential to transform and unify the existing Russian legislation and law enforcement practice.

Researchers and scholars of law and political science with a special interest in human rights issue in Russia will profit from this brief but at the same time thorough study of the subject.

ABSTRACT

Gehört Russland zur europäischen System des Menschenrechtsschutzes? Führt Russland Handlungen des Europäischen Gerichtshofs für Menschenrechte durch und in welchem Umfang? Warum hat es in den letzten Jahrzehnten einen negativen Trend bei den Menschenrechten gegeben?

In dieser wissenschaftlichen Studie untersucht der Autor Fragen der Interaktion zwischen Russland und dem Europäischen Gerichtshof für Menschenrechte auf der Grundlage der Systematisierung der historischen Entwicklung und der Rechtsprechung der Organisation. Der Autor versucht, einen Ausweg aus schwierigen Beziehungen zum Straßburger Gerichtshof zu finden, indem er Legislativvorschläge formuliert und andere Empfehlungen abgibt.

Auf der Grundlage der Praxis des Europäischen Gerichtshofs für Menschenrechte und der Praxis der nationalen Gerichte wird die Notwendigkeit einer Umgestaltung und Vereinheitlichung der derzeitigen russischen Gesetzgebung und Strafverfolgungspraxis

festgestellt.

Forscher und Politikwissenschaftler mit besonderem Interesse an der Frage der Menschenrechte in Russland werden von dieser kurzen, aber gleichzeitig gründlichen Forschung zu diesem Thema profitieren.