

## DISCUSSION

### PERCEPTIONS OF THE EUROPEAN CONCEPT OF SOVEREIGNTY OF THE RUSSIAN JUDICIAL COMMUNITY: PROBLEMS OF IMPLEMENTATION OF ECHR DECISIONS IN THE RUSSIAN FEDERATION

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**Abstracts:** *The sovereignty of contemporary state is a key question in the international relationships. The sovereignty is exceptional right of every state without any external coercion to deciding of problems of internal and external policy. Many states have their own concept of the sovereignty. It has a big influence on the national judicial systems and judicial community's. In this article author considers the some issues of problems of implementation of ECHR decisions in the Russian Federation.*

**Keywords:** *sovereignty, sovereign rights, economic problems, opportunistic position, adequate perception, conjunctural moments.*

Sovereignty – is a crucial feature of the state, which means independence of the State in matters of domestic and foreign policy. Over the centuries, wars were fought and people died for the sake of the independence. Independence is freedom to determine how to proceed, how to react, how to conduct business. Lack of sovereignty means the absence of the state as the political, social and legal organization of society. The current situation raises many questions that cast doubt on some of the fundamental provisions of the traditional concept of state sovereignty. It is, of course, to waive part of the sovereign rights in favor of inter-state organizations. From a theoretical point of view, there are some questions about the relations between the concepts of the state sovereignty and the jurisdiction. Perhaps, the state sovereignty is unchanged in content and is inherent in the states since their emergence as a person from birth is inherent in such legal category as the capacity, and changes occur only in the extent of jurisdiction, There are no changes in the bulk of their sovereign rights. Incidentally, this view is shared by a number of Russian jurists<sup>1</sup>. On the other hand, it also states that jurisdiction can be considered a part of state sovereignty and limiting jurisdiction means self-limitation of state sovereignty<sup>2</sup>. We believe that this position is most appropriate for this work because it is considering related concepts and provides an opportunity for differentiation. Incidentally, the founder of the doctrine of state sovereignty held that its essence is revealed in the specific mandate of the

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<sup>1</sup> CHERNYAK, L.,Y. *Theoretical problems of state sovereignty: thesis*. Chelyabinsk, 2007. p. 13.

<sup>2</sup> KAYUMOVA A.,R. *Sovereignty and jurisdiction of the state: the problem of correlation / Constitutional and municipal law*. 2008. Number 9. p. 14.

sovereign, and not just in the exclusive role of sovereignty as one of the main features of the state<sup>3</sup>. Because every exclusive role must in some way be expressed.

Modern integration and globalization processes dictate the requirements, under which states must adjust their foreign policy. The European justice system establish within the European continent to an explicit example after the adoption in 1950 of the Convention on the protection of fundamental rights and Freedoms, of man and citizen (hereinafter the Convention) came legal framework for the activities of the European Court of Human Rights (hereinafter the ECHR). The Russian Federation (hereinafter RF) joined the Council of Europe in 1996. The very same ratification occurred in 1998. Since then, Russian citizens have the opportunity to seek protection of their violated rights and lawful interests of the EHCR and the EHCR made in respect of the RF have acquired legal force.

In fact, according to the present Convention, all European countries after adopted this Convention, they refused to give up their sovereign rights in favor of the European Community, because only the union and the formation of more inclusive markets, through their restructuring and integration work together in partnership can provides successfully participate in the global division of labor. European states reject of parts of the sovereign rights, and it allow citizens to freely realize their potential by common values, defined the ECHR on the European territory. Thus, the rejection of parts of the sovereign rights is necessary to achieve the common good and the implementation of private and public interests in the European and world community.

RF has a qualitatively and quantitatively different economy, in contrast to most European countries participating in this convention, and consequently there are numerous contradictions in the organization of labor, commodity and monetary exchange with Europe. On such a different economic basis and there is a different understanding of sovereignty. Due to its lack of development in different perceived universal European values and ideals. Because of this understanding of sovereignty in Europe and Russia also discord. We can say that within the European concept of sovereignty is limited to the amount of sovereign rights in order to improve the welfare of citizens, but within the framework of the Russian concept of sovereign rights of the limited amount of selective, depending on the economic situation and the political conjuncture, mainly for the welfare budget and the realization of fiscal policy. In this sense, there is clearly some kind of electoral expediency of limiting the sovereign rights of Russia, distinguished by variability, which can be characterized as opportunistic. Under uniformly perceived the European concept that understanding as a whole is not permissible. Consequently, the Russian courts, in practice, often are forced to selectively accept the position of the ECHR on the basis of a wide variety of temporary factors that impede the implementation of an integrated judicial decisions of the European Community. This results in worsening rather complicated Russia's relations with European countries and complicates the full integration of Russia into the European economic and legal fields.

Speaking about the challenges of implementation of ECHR judgments, offer more detail on the positions of the Russian Constitutional Court (hereinafter CC). So, V. Zorkin, chairman of the Constitutional Court, in the Article<sup>4</sup> by V. Zorkin notes that the CC considered

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<sup>3</sup> BODIN, J. *Six Books of the Republic (State) / Anthology of World of legal thought*. Vol 3, p. 373, abridged and translated by M. J. Tooley, 1995.

productive and necessary cooperation with the ECHR in order to eliminate defects in the laws and ensure the rights of citizens to judicial protection, provision of the observance of the Convention.

So, in the article by V. Zorkin notes that “20 November 2007 CC adopted Decision N 13-P about provisions of the Criminal Procedure Code that does not allow persons to which the compulsory medical measures (on the conclusion of Psychiatrists), to participate personally in the criminal process and hearing, to meet with the case, petitions and appeal against decisions. The Constitutional Court shall declare unconstitutional the provisions of decision of the ECHR to the extent that they - the meaning it attaches to the established legal practice - don't allow citizens to exercise their procedural rights”. In essence, the decision of the CC on 20 October 2005 in the case of *Romanov v. Russia* can be regarded as enforcement of the ECHR. “That it was stated that the applicant's presence in court is a prerequisite to a judge personally could see in his mental state and a fair decision. This legal position was reproduced by the CC”<sup>5</sup>.

On the other hand, the CC, as noted by Zorkin, stands on the position of a reasonable combination of national and supranational. And the test of reasonableness, the face of rationality and irrationality of the ECHR and the RF Constitutional Court does not always coincide. In particular this is reflected in the ECHR ruling on October 7, 2010 in the case of *Konstantin Markin v. Russia*, where the ECHR did not agree with the position of the CC, which is expressed in the Constitutional Court Ruling of 15. 1. 2009 N 187-O-O. The disagreement was based found on to the fact that, according to the ECHR, the Russian legal regulation, provides military-women with the right to leave a child under the age of three in care and does not recognize this right for military men (they can use only a short vacation) “inconsistent with the provisions and requirements of Art. 8 of the Convention, and such an attitude lacks reasonable justification for CC”<sup>6</sup>. On the other hand, it is impossible not to notice that in the RF proclaims the protection of motherhood and childhood, and it is assumed that the upbringing of children engaged in the first place for the mother. Strictly speaking, it is the sovereign right of States, as interpreted and understood as “vague” provisions of the Convention and how to implement them, including a deal to promote the development of non-traditional family relationship or not. In this sense, of course the prerogative of the state must be recognized and respected, in spite of all integration and globalization processes. Otherwise, the concept of national sovereignty of the State in the near future may simply disappear.

On the other hand, granting the state the sovereign right to define independently and completely the face of reason and unreason, the feasibility and inappropriate in an unstable political situation, there is a risk of making short-term solutions that address the individual interests. It is may be even “legal” distortion of the meaning of the Convention for personal gain. This, we believe, is unacceptable as a legitimate and unacceptable interference in the internal affairs of states, without understanding its specifics, the mentality of the people, its cultural and moral traditions. The unthinking mass globalization

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<sup>4</sup> <http://www.rg.ru/2010/10/29/zorkin.html>.

<sup>5</sup> <http://www.rg.ru/2010/10/29/zorkin.html>.

<sup>6</sup> <http://www.rg.ru/2010/10/29/zorkin.html>.

and standardization of culture can lead to deformation of national identity and democratization of excessive degradation of society.

We reflect that the mandatory nature of the RF for ECHR decisions derives from Article 46 of the Convention.

We note several ECHR rulings defining the scope of limitation of sovereignty, is directly related to the RF.

Thus, in its Resolution of 15 January 2009 in the case of “Burda v. Russia European Court has reflected:” As suggested by the ECHR, the means by which the national legal system will be implemented legal obligations arising from Article 46 of the Convention on the Protection of Human Rights and Fundamental freedoms, are elected by the respondent State, provided that these funds will be compatible with the findings contained in the relevant decision of the ECHR, except in cases where allegedly committed by national courts of errors in fact and in law could violate protected by the Convention rights and freedoms, to resolve issues interpretation and application of national legislation should national authorities, namely the judiciary.

In another case, in the case of “Hornsby (Hornsby) against Greece”, and from 24 July 2003 in the case of “Ryabykh against Russia”, the ECHR stated: ECHR is only a breach of the Convention on the Protection of Human Rights and Fundamental Freedoms in respect of the applicant, but may not take further steps to eliminate it, particularly in cases where the violations is a continuing character, or is caused by a national court admitted substantial violations of procedural law. In such cases, an effective remedy can be blocked by a valid national judicial act, in connection with the imposition of which the applicant appealed to the ECHR and which is binding on the territory of the State and must be performed. Because the national judicial act is not subject to revision in the system of international jurisdiction, enacted by the State commitment to execute final judgments of the ECHR, including those declaring a violation of the Convention for the elimination of which requires removal of judgments solved in the framework of national jurisdiction, it is reasonable, therefore, the introduction of a national legal mechanism for restoration of rights of persons concerned, if these rights cannot be restored by an award and payment of monetary compensation alone.

Thus, we can say that is not always adequate perception of the Russian judicial system ECHR decisions due to different perceptions of sovereignty. Such a perception, as we have noted is not accidental and is dictated by specific political, economic and social aspects, as well as a number of conjunctural moments and directions of state policy. Adequacy in this case means giving the Russian justice system with the Convention of meaning and values of the norms of the Convention, which differs from the understanding that it attaches to the ECHR and the European Community. However, the further evolution of state institutions, in our opinion, could help overcome such beaten out of the total order moments.

The limitation of sovereignty can be illustrated by the conflict that arose in 2007–2008, on the presidential election between the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the Russian Federation. Then a dispute arose as to the number of observers, the processing of their documents and time of arrival (usually at least a month to follow the election campaign). As a result, observers refused to travel to Russia and there was a lot of speculation about Russia’s unwillingness to ensure the transparency of elections, particularly given the fact that the 2003 elections were assessed by the ODIHR

as free, but fair. Through political and information background is clearly seen the question of the relationship between the national and supranational, rational and irrational. In this case, priority should be given to the State in whose the territory as elections were held at the national level and the state therefore itself should have the right to determine how to organize elections and the number of observers that should be present and the terms of their stay. Moreover, decisions must be made in the national interest, and not to satisfy the views of senior officials. On the other hand, the fact the observers were present in the elections does not mean that they were objectively assessed, and this should also be taken into account, because otherwise the presence of international observers in the election could be a mere formality. That is why it is important informed decisions, but the final decision should be made by the state. Such decision shall be recognized as a sovereign and not contested. Another thing that the assessment at the international level may be different, but it should not be provocative, calling for the condemnation of the government's actions, revolutions. Ultimately this could lead to a loss of stability in society and the disintegration of multinational states. The legality and legitimacy of such decisions without adequate evidence is questionable, and such reasoning seems unacceptable.