Case Law of the ECtHR in the Legal System of the Russian Federation and the Challenges Faced by the Judicial Rulemaking

Mihail Victorovich Kuchin[1] and Elena Evgenyevna Gulyaeva[2,*]

[1]PhD in International Law, Partner of Legal Company "Mozhno",

[2]PhD, Associate Professor at International Law Department, Diplomatic Academy of the Russian Ministry of Foreign Affairs; Member of Russian Association of International Law, Member of European Association of International Law, Member of the Council for International Relations of the International Institute of Human Rights (IIDH -America), Member of Constitutional Council of Justice (Argentina); 119021, Moscow, Ostozhenka 53/2, Building 1, Russia

Abstract: The article deals with the problem of determining the place and significance of international case law in the legal system of the Russian Federation. On the basis of analysis of international and domestic legal acts and judicial practice existing contradictions are identified and ways to resolve them are offered.

Methodology: The research uses general scientific and special cognitive techniques wherein legal analysis and synthesis, systemic, formal-legal, comparative-legal, historical-legal and dialectical methods are applied.

Keywords: Sources of law, international judicial precedent, case law of the ECHR, interaction between international and domestic law.

Great importance, contributed to the formation of new views in domestic legal science, belongs to the accession on 5 May 1998 of the Russian Federation to the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, which henceforth became a part of the Russian legal system. However, having acceded to the Convention, Russia has in practice encountered such a real phenomenon as the case law of the European Court of Human Rights (herein -ECtHR). This phenomenon is universally recognized in the member countries of the Council of Europe, and Russia is not to disregard it.

By ratifying the Convention, the Russian Federation declared its acceptance of the jurisdiction of the European Court of Human Rights. This declaration is contained in Article 1 of the RF Act “On ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols” dated 30.03.1998: “The Russian Federation, in accordance with article 46 of the Convention, recognizes ipso facto and without special agreement, the jurisdiction of the European Court of Human Rights regarding the interpretation and application of the Convention and its Protocols, in cases where the Russian Federation allegedly violates the provisions of these treaties” [1].

With the accession to the Convention, Russian courts have been turning to the case law of the European Court of Human Rights, which, along with other sources of law, began to be applied for the proper dispute resolution in specific cases. The Constitutional Court of the Russian Federation was particularly active in this direction immediately after accession to the Convention. “Decisions of the Constitutional Court of the Russian Federation - stated in the Recommendation on the application of universally recognized principles and norms of international Law and international treaties, adopted at the All-Russian meeting on December 24, 2002, - contain over 200 references to international instruments at various levels. In fact, every third ruling is motivated, including by reference to international legal instruments and decisions of the European Court of Human Rights” [2]. At the same time, it is important to note that the Constitutional Court of the Russian Federation uses not only the final judgments issued by the European Court with respect to the Russian Federation but also judgments concerning other countries.

The Supreme Arbitration Court of the Russian Federation by the letter № C1-7/CMP-1341 from December 20, 1999 [3] informed the arbitral tribunals of the basic provisions applied by the European Court of Human Rights in the protection of property and fair trial rights. In fact, the information letter sets out selected case law developed and applied by the ECtHR when considering cases. In this letter, the Russian Federation demands that the above provisions be taken into account in the administration of justice in the arbitral tribunals of the Russian Federation. This letter

*Address correspondence to this author at the 119021, Moscow, Ostozhenka 53/2, Building 1, Russia; E-mail: gulya-eva@yandex.ru

triggered the formation of Russian judicial practice with the case law of the ECtHR as a basis for decision making.

The idea of recognition of the ECtHR case law is also being actively pursued among courts of law. A significant development and, indeed, the first official document binding the courts of general jurisdiction to apply the case law of the European Court of Human Rights was an ordinance issued by the plenum of the Supreme Court of the Russian dated October 10, 2003, No 5 “On the application by the courts of general jurisdiction of the universally recognized principles and norms of international law and international treaties of the Russian Federation”. Paragraph 10 of the ordinance states, *inter alia*, that the application of the Convention shall take into account the jurisprudence of the European Court of Human Rights to avoid any violation of the Convention for the Protection of Human Rights and Fundamental Freedoms. This provision effectively obliges the courts of general jurisdiction to apply the case law of the European Court of Human Rights in cases involving rights enshrined in the Convention. At the same time, the Supreme Court seeks to avoid the term «case law», used by the European Court of Human Rights. In the text of the regulation, the term is replaced by expressions of «legal positions», or more generally: “based on the European Court of Human Rights rulings”, “in the practice of the application of the Convention”, “requirements contained in the judgments of the European Court”. An even more specific requirement is contained in paragraph 2 of the Decision of the Plenum of the Supreme Court of the Russian Federation dated June 27, 2013 № 21 “On the application by the courts of general jurisdiction of the Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950 and its Protocols” [4], that the legal positions of the European Court of Human Rights (hereinafter referred to as the European Court of Human Rights, the Court), contained in the final judgments of the Court against the Russian Federation are binding on the courts. In order to effectively protect human rights and freedoms, the courts take into account legal positions contained in the resulting final decisions taken against the other States parties to the Convention. The legal position is taken into account by the court if the circumstances of the case before it are similar to the circumstances analyzed and concluded by the European Court”. The precedent-setting nature of the provisions developed by the ECtHR and the binding nature of their practical application regularly addressed by the Attorney-General Office of the Russian Federation. According to Y.S. Biryukov, First Deputy Attorney- General of the Russian Federation of 2003: “The decisions of the European Court of Human Rights are precedent-setting for the investigation and judicial practice of States parties to the Convention for the Protection of Human Rights and fundamental freedoms” [5]. This approach has been enshrined in a number of acts issued by the Attorney-General’s Office of Russia and other law enforcement agencies. For example, paragraph 1.2 of Instructions of the Attorney-General Office of Russia № 275/36, IC of Russia 1/206, Ministry of Internal Affairs of Russia № 2/5443, Ministry of Emergency Situations of Russia № 195, FSS of Russia № 1 u, FSS of Russia № 21, FDCS of Russia № 4, Federal Customs Service of Russia № 1081 from June 03, 2015. “On the organization of prosecutorial supervision and departmental control over the implementation of the requirements of the law on the observance of a reasonable time during the pre-trial stages of criminal proceedings” [6] instructs all prosecutors in their activities to be guided, along with Russian laws and legal positions and explanations set out in the decisions of the ECtHR. The recognition of the importance of the case law of the European Court of Human Rights in the Russian legal system is also reflected in the activities of the Russian legislative bodies. Thus, in particular, in paragraph 4 of the State Duma Resolution “On Cooperation with the Parliamentary Assembly of the Council of Europe” dated 07.03.2001, No. 1218-III SD [7] the State Duma committees are instructed to take into account the case law of the European Court of Human Rights in their work on improving the Russian Federation legislation. Moreover, there is a tendency in the procedural legislation to formalize the right of the court to use references to judgments and decisions of the European Court of Human Rights in the motivation part of the decision. The first experience of such consolidation we see in article 180 of the APC RF. This approach is also proposed to use in the approved decision of the Committee on Civil, Criminal, Arbitration and Procedural Legislation of the State Duma of the Federal Assembly of the Russian Federation of December 8, 2014 № 124(1) the concept of a unified civil procedure code. Thus, we can say that Russia at the legislative level has begun to officially recognize the normativity of the provisions formulated by the ECtHR in its acts.

Of particular note is the fact of official recognition of the entry of the case law of the European Court of Human Rights into the Russian legal system, which is confirmed, in particular, by the decisions of the Constitutional Court of the Russian Federation. In its

Decree No. 2-P dated February 05, 2007 [8] the Constitutional Court of the Russian Federation stated directly that “decisions of the European Court of Human Rights, insofar as they interpret, based on generally recognized principles and norms of international law, the content of the rights and freedoms set forth in the Convention, including the right to access to court and fair trial, are an integral part of the Russian legal system and, therefore, must be taken into account by the federal legislator in regulating social relations and by law enforcement authorities in applying respective provisions of the Convention in accordance with international treaties”.

Many judicial decisions of the Supreme Court of the Russian Federation taken in specific cases also state the need to follow established case law of the European Court of Human Rights. The application of the legal positions of the ECtHR, which together constitute the case law of the Court, and their use as a basis for judgement, is nothing more than application of case law.

Yet, today, there are quite a number of skeptics in the legal environment, arguing that the European Court of Human Rights did not establish any case law. This, in their view, was merely standard jurisprudence.

However, in our opinion, the turning point in the dispute as to whether the ECtHR is creating case law has been the adoption of Protocol 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms of May 13, 2004 [9], which redrafted Article 28 of the Convention according to which “a Committee shall be entitled, in respect of an application under Article 34, to declare it admissible by unanimous decision, and at the same time to rule on the merits of the application, if the underlying issue in the case, concerning the interpretation or application of the Convention or the Protocols thereto, is already the subject of well-established ***case-law*** of the Court”. Protocol No. 14 has been ratified by the Russian Federation [10].

With this change, the question of the ECtHR case law existence seems to have been resolved since the dispute has been settled by reference to a recognized source of law of an international treaty.

Nevertheless, Russian courts, when applying the case law of the ECtHR in practice, with enviable persistence assert the absence of it in the legal system of the Russian Federation. This sometimes leads to quite absurd conclusions. Thus, for example, the Appeal Decision of the Ulyanovsk Regional Court of August 01, 2017 in case № 33-2954/2017 [11] ruled that “M.M.’s references in the appeal and additions hereto to the Decisions of the European Court of Human Rights cannot lead to cancellation of the substantively correct court decision. The recognition by the Russian Federation of the jurisdiction of the European Court of Human Rights does not indicate the application of elements of case law in civil proceedings” [12]. In fact, the Ulyanovsk Regional Court refused to follow the legal positions of the ECtHR, and, accordingly, the legal positions of the Constitutional Court of the Russian Federation and the Supreme Court of the Russian Federation set out in the above-mentioned judicial decisions.

In our view, however, it would be more logical to draw a different conclusion, namely, that Russia, having recognized the binding nature of the case law of the ECtHR, officially «admitted» precedent as a phenomenon in its legal system. In this regard, it is not necessary to try hard to avoid it, but rather to define it more clearly including its place in the system of sources of law. This fully applies to the case law of the highest judiciary authority [13].

From comparative law perspective, Russian law today consistently fulfills one of the three requirements for members of the Romano-Germanic family - the requirement of the **legal style**. For example, in various countries of Romano-Germanic law, judicial precedent is recognized as a normative source of law. In Germany, judicial precedent manifests itself in the form of **standige rechtsprechung**, in Spain - in the form of **jurisprudentia obligatoria**. The French legal system does not recognize the concept of **jurisprudence constante**, but in France the judicial precedent manifests itself in the form of a decision of the highest administrative court (**conseil d'etat**), which acts as the normative source of law for all administrative courts in France. In France, the precedent of the Supreme Court of General Jurisdiction also turns into a normative source of law. In Russia, however, there is no judicial precedent in any of the previous European forms. But in Russia there is an abstract decision of the Constitutional Court of the Russian Federation, a guiding clarification of the Plenum of the Supreme Court, a resolution of the Presidium of the Supreme Court and a review letter of the Supreme Arbitration Court, which should be considered normative sources of law, although they cannot be considered judicial precedents in the European understanding of this institution.

Today, practitioners are often faced with a situation where recourse to regulations made by the higher courts in earlier decisions may be the basis of a court's decision and is justified by the need to ensure the unity of judicial practice or rejected on the grounds of non-existence of case law in Russia. This widespread approach of the judiciary is a clear violation of the rule of law principle, its certainty and predictability. The situation demands a solution. The irony of the situation is also that, at the doctrinal level, the existence of judicial rulemaking in the legal system of the Russian Federation is rarely denied.

The predominant approach in the legal sciences to this problem can be gauged even in numbers of dissertations defended in recent years, which clearly confirm the assumption that the case law of the ECtHR is accepted as a source of Russian law in various sectors. This heightened interest is due to the actual changes observed in practice.

The problem does not seem to be in limbo. Lack of comprehensive regulation by the State is the way to the uncertainty of the law, which contributes to the negative image of the Russian legal system, where the principle of the judicial practice unity, symbolized by the principle of justice, proclaimed publicly but often not respected in reality. The solution to this problem lies in a series of steps. First of all, the development of the concept of judicial rulemaking in the Russian Federation in the form of a single document, its further consideration and approval at the level of the highest State authorities, where, first, the categories of judicial acts relating to the sources of law have to be defined and the concept of case law given. In this matter, it would be appropriate to proceed from the characteristics of the judicial precedent, applied in the ECtHR system, rather than the classical understanding of the ECtHR, which would allow for the establishment of a general definition of the precedent employed in regulating intra-State relations in the Russian Federation. Professor L.P. Anoufrieva drew attention to this aspect as early as 2002, stating that "one cannot share the position of scholars who believe that case law is the legacy and active baggage of the Anglo-Saxon system alone" [14].

There should also be a clear definition of the actors involved in rule-making and criteria for designating legal provisions as case law should be established. Moreover, the development of judicial precedent as a source of law applicable in the Russian Federation entails the need for the definition of the "source of law of a national legal system" that Professor S.Y.Marochkin drew attention to [15].

Secondly, the procedural legislation of the Russian Federation now provides for the possibility of applying solutions in the management of internal relations of the European Court of Human Rights only. However, Russia has officially accepted the jurisdiction of some other international courts whose decisions may directly affect the domestic sector.

The decisions of the CIS Economic Court and the Court of Justice of the Eurasian Economic Union which are used in practice by Russian courts to justify their own decisions [16].

In addition to references contained in the judicial acts on specific cases, the conclusions of the CIS Economic Court were included in the decisions of the Plenum of the SAC RF [17], informational letters of the SAC RF [18], reviews of judicial practice of the Supreme Court of RF [19], and the conclusions of the Eurasian Economic Union Court - in the decisions of the Plenum of the Supreme Court of RF [20].

In this regard, it seems necessary to expand the list of international courts whose decisions may serve as a legal basis for rendering of judgements by Russian courts.

Consistent implementation of ECtHR judgments allows the States Parties to the European Convention to fill gaps in their legislation and law enforcement practice. Decisions made by the Court not in favor of the Russian Federation often constitute existing shortcomings in the domestic law enforcement system, and many changes in Russian legislation, judgments and decisions of the highest courts of the Russian Federation are stimulated by the legal positions of the ECtHR. At the same time, the main efforts are focused on solving the problems recognized by the ECtHR as systemic for the Russian Federation, as well as on creating effective domestic remedies.

In 2020, amendments to the Constitution of Russia were adopted by national vote. In this regard, Art. 79 of the Constitution of the Russian Federation, as amended for 2022, shall be read as follows: «The Russian Federation may participate in interstate associations and transfer to them part of its powers according to international treaties and agreements, if this does not involve the limitation of the rights and freedoms of man and citizen and does not contradict the principles of the constitutional system of the Russian Federation. Decisions of interstate bodies adopted on the basis of the provisions of international

treaties of the Russian Federation in their interpretation, contrary to the Constitution of the Russian Federation, are not subject to execution in the Russian Federation» [21].

In this case, the Constitution sets two conditions for limiting this right. Firstly, Russia cannot join an interstate association and, consequently, transfer to it part of its powers, if the result is a restriction of human and civil rights and freedoms. This refers primarily to the rights and freedoms established by the Constitution of the Russian Federation. Secondly, the entry of the Russian Federation into an interstate association should not contradict the foundations of the constitutional system of the Russian Federation, i.e. any of the provisions enshrined in Chapter 1 of the Constitution of the Russian Federation. The most important among these provisions are the principles of democracy, state sovereignty, integrity and inviolability of the country's territory, ideological and political diversity. By establishing such restrictions, the commented article becomes an additional guarantee of human and civil rights and freedoms and the constitutional order of Russia.

As for the applications of Russian citizens to the ECHR, according to the Ministry of Justice of Russia, in terms of the number of complaints against 10 thousand of the population of the Russian Federation, it is not among the leaders, while the percentage of complaints against Russia rejected by the ECHR due to their inadmissibility remains quite high - more than 90%. So, on December 10, 2020, President of the Russian Federation Vladimir Putin held a meeting of the Council for the Development of Civil Society and Human Rights, which, in particular, discussed issues of increasing the effectiveness of instruments for protecting human rights and humanizing the Russian judicial system. One of the ideas discussed during the event was the proposal to create a Russian court for human rights, which should become a kind of "external watchman" designed to strengthen control over justice. This idea is not new, it was discussed earlier both in Russia (in 2012) and in Europe (in 2014-2015). In particular, they talked about a proposal to establish national courts or a special commission that would deal with human rights. But this initiative did not receive support "due to the likelihood of many procedural problems, the significant costs of implementing these proposals, as well as the risks of violating the uniformity of judicial practice." The head of state generally recognized the initiative as correct, but requiring additional elaboration in terms of financing the new institution and the need to make appropriate changes to the Russian judicial system. Therefore, the list of instructions following the meeting included a recommendation to the Supreme Court of the Russian Federation, together with the Ministry of Justice of Russia, to consider the feasibility of creating a Russian court for human rights. For example, within the framework of judicial protection, only Canada has a human rights court as a specialized court, which is more similar to judicial investigators (it initiates investigations in cases of only one category - discrimination against workers in labor relations). "In other national systems, the trend today is the strengthening of extrajudicial human rights mechanisms, namely, ombudsmen."

Third, it is necessary to define the place of rules created by both international and national courts in the hierarchy of all norms applied in the territory of the Russian Federation. In fact, the issue has not been developed at the doctrinal level. Apparently, case law produced by the courts (Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation, international courts) will be at different levels of hierarchy.

At the same time, the case law is largely secondary, adopted on the basis of and in development of other norms. However, unlike by-laws, case law is placed at the same hierarchical level as the basic norm to which they relate.

The problem of determining the place of the ECtHR case law in the hierarchy of law sources depends on the place occupied by the Convention for the Protection of Human Rights and Fundamental Freedoms. The current lack of consensus on this issue gives rise to conflicting approaches, both in science and in practice. In this regard, it is useful to refer to the experience of some European countries where ECtHR case law has been identified. The Netherlands, for example, has chosen to give priority to the self-executing rules of international treaty norms to which they also refer the European Convention on Human Rights in its interpretation of the ECtHR over national legislation, including the Constitution [22]. Austria and Spain granted the European Convention a normative status on a par with the Constitution [23], and Germany- equal to a federal law [24].

In this regard, the position that advocates the need to distinguish between the Convention and the case law of the ECtHR in terms of legal significance, which

we believe can further complicate the process of determining the place of case law in the hierarchy of sources. For example, V.D.Zorkin argues that “the approaches of the European Court of Human Rights are still not the Convention itself in its textual (literal) form but its interpretation in concrete-historical conditions” [25].

It would appear that such a distinction between the rules contained in the Convention and the case law of the ECtHR is only admissible in formal terms. However, if there is also a difference in legal effect, such an approach has the potential to destroy a convention mechanism built up over decades within the framework of the Council of Europe. The removal of the case law of the ECtHR from the Convention does not satisfy either the Convention’s provisions or the commitments undertaken by the Russian Federation upon ratification of the Convention. In accordance with article 32 of the Convention, all questions relating to the interpretation and application of the provisions of the Convention and the Protocols are within the exclusive competence of the European Court of Human Rights. Russia recognized this fact by signing and ratifying the Convention. This commitment was also reflected in the Russian Federation’s statement in Federal Law “On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols” No. 54-FL of March 30, 1998.

It should be noted, however, that the distinction between the legal force of the Convention and of the case law of the European Court of Human Rights is not the dominant position in the Constitutional Court of the Russian Federation. Thus, according to the Deputy Chairman of the Constitutional Court of the Russian Federation S.P. Mavrin, international “treaties, as well as decisions of competent interstate bodies interpreting their provisions, should be located in the Russian legal system in terms of their legal force under the Russian Constitution and decisions and legal positions of the Russian Constitutional Court based on it, and thus occupy an intermediate position between the Constitution and decisions of the Russian Constitutional Court interpreting its provisions, on the one hand, and federal laws of the Russian Federation, on the other because it is above federal law that they have priority in our legal system According to Art. 15, para. 4 of the Constitution of the Russian Federation” [26].

The Protocol No. 15 to the Convention within the framework of the Interlaken Process is approaching the entry into force, which enshrined the principle of subsidiarity and the doctrine of margin of appreciation in the implementation of the European Convention on Human Rights. This means that although the judgments of the ECtHR are binding, it plays the so-called subsidiary, that is, an additional role: not being an appellate instance in relation to national courts, it does not overturn their decisions, does not reconsider cases, and the primary task of compliance with the provisions of the Convention is performed by the national authorities, choosing the methods most suitable for the relevant society and legal system.

It is worth mentioning, State discretion is the right of a State to interfere with a right or freedom guaranteed by the Convention, based on the norms of the Convention, limited by the need to respect the principle of proportionality and with the primary objective of effectively ensuring the human rights and freedoms enshrined in the Convention, if there are reasonable and sufficient grounds for doing so under domestic law. Moreover, States restrict rights and freedoms only in accordance with the norms of domestic law, but the content of such norms is the freedom of discretion (although, in this case, of course, international obligations of the State must be taken into account). In the legal positions of the ECtHR, the principle of the freedom of discretion of states ("margin of appreciation") is elaborated in detail. In Russian science this principle is called differently: "freedom of discretion", "margin of appreciation", "margin of appreciation". At the same time, its translation as "margin of appreciation" is, in our opinion, the most acceptable, since the essence of the principle is to leave the appropriate freedom to the state. The word "margin" only emphasizes that this freedom is not unlimited, to establish its limits, however, are called for other legal structures developed in the practice of the ECtHR, such as the principles of legality, reasonableness, proportionality. Thus, in relation to the system of human rights protection established by the Convention, the term "margin of appreciation" can be considered as legal, since it was enshrined in the legal positions of the ECtHR, which are of a legal nature.

For example, the content of the right to liberty and security of person enshrined in the fundamental law of Russia would be incomplete without taking into account the practice of the Constitutional Court of the Russian Federation, the legal positions of which, regardless of the place given to them by the theorists of law in the domestic legal system [27], are essential for understanding the stipulated the Constitution of our

country guarantees the right under consideration, including in the context of relevant international obligations; and its respective legal positions. Initially, the result of the coordination of the wills of states [28] representing different legal systems, the consolidation of the law in question in international legal norms, today has a significant "reverse" impact on the development of its domestic legal content [29]. Professor Yu.A. Tikhomirov emphasizes that now and in the future there is a very promising tendency for the organic convergence of national and international law [30].

Fourth, recognition of the normative legal position of international courts as grounds for a judicial decision by Russian courts raises the issue of securing their operation in the territory of the State. The establishment of a general mechanism for the application of the legal positions of both international and national courts, therefore seems reasonable. The development and implementation of such a mechanism would, on the one hand, provide much greater stability of the law and predictability of the rules, and, on the other hand, promote the authority of Russian justice at the international level. This, in turn, will also have an economic effect in the form of a sense of reliability and safety in the Russian market.

CONCLUSIONS

Objections to the formal recognition of regulations formulated by international courts as legally binding in the territory of the Russian Federation, which sometimes appear in the media, based either on differences in interpretations of the same issues in the decisions of the same court, or linked to the phenomenon of fragmentation caused by different approaches to the same issue by various international courts. However, the importance of the problem is often exaggerated. In the above cases, usually when comparing different decisions of the same court, time and space are often not taken into account which is quite important given the dynamic development of the law. Diversity of approaches among different international courts to the same issue in practice is rare. A court rejecting the position taken by another international court would, as a rule, explain in some detail the reasons why it does not apply this position.

As for the application of the legal positions of international courts in the Russian Federation then formalizing their position in the hierarchy below the Constitution of the Russian Federation and granting the legislative possibility of their recognition by the Constitutional Court of the Russian Federation, declares them unconstitutional and removes most of the problems associated with it. At the same time, the place of international treaties and case law clearly defined and established in the hierarchy of sources of the legal system of the Russian Federation and would give the State an additional legal basis for asserting its position before international bodies and serve as a starting point for international courts to develop approaches in the context of the primacy of national constitutions.

REFERENCES

[1] CL RF. 1998. № 14. Art. 1514.

[2] Russian Justice. 2003. № 3. P7.

[3] Vestnik SAC RF. 2000. № 2.

[4] Bulletin of the Supreme Court of the Russian Federation. 2013. № 8.

[5] Biryukov Y. New criminal-procedural legislation and practice of prosecutor's supervision // Russian Justice. 2003. № 6. P.45.

[6] Bulletin of the Federal Bailiff Service. 2015. № 11.

[7] CL RF. 2001. № 12. Art. 1088.

[8] CL RF. 2007. № 7. Art. 932

[9] CL RF. 2018. № 37. Art. 5720.

[10] Federal Law dated 04.02.2010 N 5-FZ "On ratification of Protocol № 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control mechanism of the Convention, dated May 13, 2004" // C33 RF. 2010. № 6. Art. 567.

[11] SPC ConsultantPlus.

[12] For similar conclusions see: Appellate determination of the Supreme Court of the Republic of Mordovia of 24.01.2018 in case No. 33-174/2018; Appellate determination of the Supreme Court of the Republic of Mordovia of 18.01.2018 in case No. 33-122/2018 // SPC ConsultantPlus.

[13] For more details on this see: Kuchin M.V. Judicial rule-making: conceptual foundations. M.: Yurite, 2019.

[14] Anufrieva L.P. Ratio of International Public and Private International Law: Legal Categories. Moscow: Spark, 2002. P. 209.

[15] Marochkin S.Y. Action and implementation of international law norms in the legal system of the Russian Federation. M.: Norma, Infra-M, 2011. P. 82.

[16] See: Ruling of the Plenum of the Supreme Court of the Russian Federation of 26.11.2019 № 49 "On some issues arising in judicial practice in connection with the entry into force of the Customs Code of the Eurasian Economic Union" // Rossiyskaya Gazeta. 06.12.2019; Definition of the Supreme Court of the Russian Federation of 04.10.2017 № 305-KG17-13647 on case № A40-159573/16 // SPC ConsultantPlus; Definition of the Supreme Court of the Russian Federation of 17.05. 2017 № 303-ES17-4542 in case № A73-4923/2016 // ConsultantPlus; Definition of the Constitutional Court of the Russian Federation of 24.09.2012 № 1800-O // ConsultantPlus; Definition of the Supreme Court of the Russian Federation of 02.08.2013 № VAS-5542/13 in case № A63-3429/2011 // ConsultantPlus.

[17] Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation of 11.06.1999 № 8 "On the effect of international treaties of the Russian Federation in relation to

issues of arbitration proceedings" // Bulletin of the Supreme Arbitration Court of the Russian Federation. № 8. 1999

[18] Informational letter of the Supreme Arbitration Court of the Russian Federation of 04.02.2000 № NA-5-2 // Bulletin of the Supreme Arbitration Court of the Russian Federation. № 4. 2000.

[19] Review of Legislation and Judicial Practice of the Supreme Court of the Russian Federation for the Third Quarter of 2001 // Bulletin of the Supreme Court of the Russian Federation. 2002. № 4.

[20] Ruling of the Plenum of the Supreme Court of the Russian Federation of 12.05.2016 № 18 "On some issues of application of customs legislation by the courts" // Bulletin of the Supreme Court of the Russian Federation. 2016. № 7.

[21] Text of Art. 79 of the Constitution of the Russian Federation as amended for 2022.

[22] Kjaer M. Mechanisms of effective implementation of the European Convention on Human Rights in the Netherlands // International conference "Improvement of national mechanisms for effective implementation of the European Convention on Human Rights". Council of Europe. 2016. P.24.

[23] See: A Europe of Rights: The Impact of the ECHR on National Legal Systems. Oxford. 2008.

[24] Nussberger A. Improvement of national mechanisms for effective implementation of the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms - report on Germany // International conference "Improvement of national mechanisms for effective implementation of the European Convention on Human Rights". P.89.

[25] Zorkin V.D. Closing speech // International conference "Improvement of national mechanisms of effective implementation of the European Convention on Human Rights. P.143

[26] S.P. Mavrin S.P. Legal positions of the Constitutional Court of the Russian Federation on the problem of implementation of the European Convention on Human Rights // International conference "Improvement of national mechanisms of effective implementation of the European Convention on Human Rights". P. 42.

[27] Regarding the legal nature of the impact on public relations of acts adopted by the judicial authorities, including the Constitutional Court of the Russian Federation, there are polar views in science. See, for instance: Saulyak O.P. Judicial practice in Russia as a source of Russian law (material and formal aspects of the problem) // State and Law. 2009. No. 11. Pp. 5-10; Nersesyants V.S. The court does not legislate and does not govern, but applies the law // Judicial practice as a source of law. M., 1997. Pp. 39-41.

[28] See: Tunkin G.I. Theory of international law / under total. ed. L.N. Shestakov. M., 2000. Pp. 185-192.

[29] This effect in relation to the Convention, Professor O.I. Tiunov calls it a "feedback system". See: O.I. Tiunov. On the role of the Convention for the Protection of Human Rights and Fundamental Freedoms and the decisions of the European Court of Human Rights in the practice of the Constitutional Court of the Russian Federation // International legal methods of protecting human rights: materials of an international scientific and practical seminar (October 15-17, 2002). Saratov, 2002.Pp. 181-182.

[30] See: Tiunov O.I. Universal Declaration of Human Rights in the Norms of International and Constitutional Law // Journal of Russian Law. 2009. No. 2. P. 136.

Received on 28-10-2022 Accepted on 05-12-2022 Published on 22-12-2022

© 2022 Kuchin and Gulyaeva; Licensee Lifescience Global.
This is an open access article licensed under the terms of the Creative Commons Attribution License (http://creativecommons.org/licenses/by/4.0/) which permits unrestricted use, distribution and reproduction in any medium, provided the work is properly cited.