



RULING OF THE PLENARY SESSION OF THE SUPREME COURT OF THE RUSSIAN FEDERATION

No. 21

Moscow

27 June, 2013

On Application of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and Protocols thereto by Courts of General Jurisdiction

In compliance with the principle of subsidiarity, which is one of the vital principles of the European Court of Human Rights, protection of the rights and freedoms envisaged by the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and Protocols thereto ("the Convention and the Protocols thereto") first of all is the duty of state authorities, including courts.

In order to ensure unified standards of application by the courts of general jurisdiction of the Convention and the Protocols thereto ratified by the Russian Federation, the Plenary Session of the Supreme Court of the Russian Federation, on the basis of Article 126 of the Constitution of the Russian Federation, Articles 9 and 14 of the Federal Constitutional Law of 7 February 2011 no. 1-FKZ On General Jurisdiction Courts in the Russian Federation, hereby rules to provide the following clarifications to the courts:

1. The Convention and the Protocols thereto are international treaties of the Russian Federation, and in their application the courts of general jurisdiction (hereinafter - "the Courts") must take into consideration the explanations contained in the Ruling of the Plenary Session of the Supreme Court of the Russian Federation of 31 October 1995 No.8, "On Certain Issues of Application of the Constitution of the Russian Federation by the Courts during Administration of Justice", as well as in the Ruling of the Plenary Session of 10 October 2003 No. 5

“On Application of Universally Recognised Principles and Norms of International Law and International Treaties of the Russian Federation by Courts of General Jurisdiction”.

2. As follows from Article 46 of the Convention, Article 1 of Federal Law of 30 March 1998 no. 54-FZ On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto (hereinafter - "the Federal Law on Ratification"), the legal positions of the European Court of Human Rights (hereinafter - "the European Court" and/or "the Court") contained in the final judgments of the Court delivered in respect of the Russian Federation are obligatory for the courts.

In order to effectively protect human rights the courts take into consideration the legal positions of the European Court expressed in its final judgments taken in respect of other States which are parties to the Convention. However this legal position is to be taken into consideration by court if the circumstances of the case under examination are similar to those which have been the subject of analysis and findings made by the European Court.

3. The legal positions of the European Court are taken into consideration when the Russian legislation is applied. In particular, the content of the rights and freedoms provided by the laws of the Russian Federation must be defined in view of the content of similar rights and freedoms displayed by the European Court when applying the Convention and the Protocols thereto.

The courts' attention must be drawn to the fact that the Russian Federation legislation may provide a higher level of protection of human rights and freedoms as compared to the standards guaranteed by the Convention and Protocols thereto in the Court's interpretation. In such cases the courts, being guided by Article 53 of the Convention, need to apply Russian legislation provisions.

4. In order to avoid violation of human rights and freedoms, including their ungrounded restriction, the legal positions of the European Court must be taken into consideration when applying not only the Convention and the Protocols thereto but also other international treaties of the Russian Federation (Article 31 § 3 (c) of the Vienna Convention on the Law of Treaties of 23 May 1969 (hereinafter - "the Vienna Convention")).

5. As follows from the provisions of the Convention and the Protocols thereto in the European Court's interpretation, restriction of human rights and freedoms (interference with human rights and freedoms) implies any decisions, actions (failure to act) of state authorities, local self-government authorities, officials, public and municipal servants as well as other persons following adoption or implementation (non-implementation) of which in respect of the person, alleging that his/her rights and freedoms have been violated, the obstacles hindering

realization of his/her rights and freedoms have been created. For example, under the case-law of the European Court, using a person's image without this person's consent constitutes violation of the relevant rights guaranteed by the Convention.

At the same time, according to Part 3 of Article 55 of the Constitution of the Russian Federation, the provisions of the Convention and the Protocols thereto, any restriction of human rights and freedoms must be based on federal law, pursue a socially meaningful and lawful purpose (e.g. ensuring public safety, protection of ethics and morality, the rights and lawful interests of other persons), be necessary in a democratic society (proportional to the socially meaningful and lawful objective pursued).

Non-observation of one of these restriction criteria constitutes violation of human rights and freedoms which may be subject to judicial protection under the procedure prescribed by law.

Some human rights and freedoms guaranteed by the Convention and the Protocols thereto can not be restricted under any circumstances (the right not to be subjected to torture, etc.).

6. The grounds for restriction of human rights and freedoms can be provided not only by a federal law but also by a treaty concluded by the Russian Federation (extradition of a person to a foreign state for criminal prosecution by way of fulfilment of a respective treaty, etc.).

7. The objectives of the Convention and the Protocols thereto are effective admittance and protection of violated human rights and freedoms, that is why provisions of such treaties concluded by the Russian Federation cannot serve as the basis for their restriction.

8. While examining the cases the courts should always substantiate the necessity of restriction of human rights and freedoms based on the established factual circumstances. The courts' attention must be drawn to the fact that restriction of human rights and freedoms is allowed only when there exist related and sufficient grounds for such restriction, as well as if the balance between lawful interests of the person whose rights and freedoms are restricted and the lawful interests of other persons, the state and society is preserved.

For example, if the court satisfies a debtor's motion for delay in enforcement of a court decision in civil proceedings for a short time period, it does not always points that the creditor's right to enforcement of a court decision within a reasonable time (as guaranteed by Article 6 § 1 of the Convention) is violated.

Restriction of procedural rights, e.g. removal of a person from the courtroom, is allowed after this person has been explained the consequences of such restriction (Article 6 § 1 of the Convention as interpreted by the European Court).

If the court establishes the circumstances which favour the need to restrict a person's rights and freedoms such circumstances must be reflected in the judicial acts.

9. In compliance with the generally recognized principles and rules of international law, the provisions of Articles 1 and 34 of the Convention in the interpretation of the European Court, for the purposes of restoration of the violated rights and freedoms of a person a court needs to establish the fact of violation of such rights and freedoms, reflecting the said circumstance in the judicial act. The pecuniary and (or) non-pecuniary damage caused by such violation are subject to reimbursement in the procedure prescribed by law.

When establishing the amount of the monetary compensation of non-pecuniary damage the courts can take into consideration the amount of just compensation in the part concerning reimbursement of non-pecuniary damage, awarded by the European Court in case of similar violations.

The courts' attention must be drawn to the fact that quashing (amendment) of a judicial act, violating the provisions of the Convention and the Protocols thereto, based on the circumstances of the case, may be sufficient enough for restoration of the violated rights and freedoms without a monetary compensation of non-pecuniary damage. E.g. quashing of a court's decision delivered on the results of judicial proceedings which have been conducted in a closed court hearing in contempt of the provisions of Article 10 of the Code of Civil Procedure of the Russian Federation or Article 241 of the Code of Criminal Procedure of the Russian Federation and consideration of the case by the court of appeal shall be the evidence of restoration of the party's right to a public court hearing.

10. In compliance with the provisions of Part 2 of Article 17 of the Constitution of the Russian Federation the basic human rights and freedoms are unalienable and belong to everyone by right of birth. However a person is entitled to waive his/her rights and freedoms including those of procedural character. At the same time such waiving always must be clearly expressed, voluntary and not contrary to the Russian Federation legislation, universally recognized principles and rules of international law and international treaties of the Russian Federation.

The declaration of a person's will related to waiving his/her rights and freedoms may be reflected in his/her written submission, record or other documents from the case-file and clearly proving such refusal.

As follows from the provisions of Item 2 of Part 1 of Article 389.12 of the CCrP RF, Article 6 § 1 of the Convention as interpreted by the European Court, a court of appeal is not entitled to examine a criminal case in absence of a person convicted to imprisonment if only the person does not distinctly state his/her willingness not to participate in examination of the appeal (submission).

If a person wishes to waive his/her rights and freedoms it may be evidenced by absence of any action on his part, if such absence of action is regulated by law (e.g. in the case indicated in Item 8 of Article 222 of the CCivP RF).

11. The courts' attention should be drawn to the fact that decisions, actions (failure to act) of state authorities, local self-government authorities, officials, including enquiry officers, investigators, public or municipal servants, must comply not only with the legislation of the Russian Federation but with the universally acknowledged principles and regulations of international law, international treaties concluded by the Russian Federation including the Convention and the Protocols thereto as interpreted by the European Court (Part 4 of Article 15 of the Constitution of the Russian Federation, Part 2 of Article 1 and Part 4 of Article 11 of the CCivP RF, Part 3 of Article 1 of the CCrP RF, Part 2 of Article 1.1 of the CCivP RF, Part 3 of Article 1 of the CCrP RF, Part 2 of Article 1.1 of the Code of Administrative Offences of the Russian Federation). For example, evidence is inadmissible both if it is obtained in violation of the Russian procedural legislation and if it is obtained in violation of the Convention or the Protocols thereto as interpreted by the European Court.

12. Under Article 31 § 1 of the Vienna Convention the provisions of the Convention and the Protocols thereto are subject to systemic interpretation. Therefore the need to observe reasonable time-limits of judicial proceedings cannot justify restriction of other rights provided by Article 6 of the Convention (e.g. the right to procedural equality of arms in the judicial proceedings, the right of the defendant to question a witness testifying against him). That is why the court must not refuse to examine the evidence, necessary for full and objective consideration of the case as well as for ensuring the equality of arms under the pretext of observation of reasonable time-limits of the judicial proceedings.

13. By virtue of Article 1 of the Convention as interpreted by the European Court, the State, represented by its agencies, must perform the actions required for effective protection of the rights and freedoms of the persons under its jurisdiction. For example, if in the course of consideration a case on establishment of paternity it is discovered that the genetic examination has proved to be unclear or incomplete, then for effective protection of the child's rights the court should order an additional examination in compliance with Article 87 of the CCivP RF.

In compliance with Article 6 § 3 (c) of the Convention as interpreted by the European Court the defendant has the right to effectively protect himself/herself

personally or through a personally chosen legal assistance. The first-instance courts, courts of appeal, courts of cassation or supervisory instance must give an exhaustive explanations on the content of this right as well as to provide for its implementation in compliance with the Russian Federation legislation.

14. The provisions of Article 5 § 4 of the Convention, as interpreted by the European Court, provide for the right of a person expeditious examination by a court on the matter of lawfulness of the person's detention and his immediate release if a court recognizes detention as unlawful and/or unsubstantiated. In this connection, after receipt of a complaint and/or submission against court decision on taking into custody (on extension of the period of detention) the courts should immediately submit the relevant materials for examination on appeal. The courts of appeal should examine the said complaint and/or submission within the time-limits set by Part 11 of Article 108 of the Code of Criminal Procedure of the Russian Federation.

15. The principle of presumption of innocence stipulated by Part 1 of Article 49 of the Constitution of the Russian Federation, Article 14 of the CCrP RF, Article 6 § 2 of the Convention, is one of the aspects of fair trial of a criminal case. Therefore a judicial act must not contain any wordings which put in doubt that a person has committed a crime while there is no sentence or a decision to terminate criminal proceedings on non-rehabilitating grounds.

16. Basing on the provisions of Article 6 § 1 of the Convention as interpreted by the European Court, a person deprived of liberty is entitled to take part in the court proceedings in a civil case.

17. In compliance with Article 46 of the Convention interpreted in view of the Recommendation of the Committee of Ministers of the Council of Europe no. R(2000)2 of 19 January 2000 on the re-examination or reopening of certain cases at domestic level following judgment of the European Court of Human Rights (hereinafter - "the Recommendation on re-examination"), not every violation of the Convention and the Protocols thereto is a ground for review of a judicial act due to newly discovered circumstances.

In this connection, it should be explained to the courts that a judicial act is subject to review in case the applicant is still affected by negative consequences of such an act (e.g. if the person remains in custody in violation of the Conventional provisions) and the just compensation awarded by the European Court under Article 41 of the Convention and paid to the applicant, or other means not related to review do not provide for restoration of the violated rights and freedoms.

At the same time, the violation established by the European Court allows to come to at least one of the following conclusions:

- that the court's decision is contrary to the Convention on the merits (e.g. a judgment on administrative removal of a person from the territory of the Russian Federation delivered, as established by the European Court, in violation of Article 8 of the Convention);
- that the admitted violation of the Convention or the Protocols thereto bearing a procedural character puts in doubt the results of consideration of the case (e.g. refusal of the court to satisfy the motion to summon to the court hearing a witness whose evidence could be decisive in the case (Article 6 of the Convention)).

When a court examines the issue of necessity to review a judicial act, the causal link between the violation of the Convention or the Protocols thereto established by the European Court and the unfavourable consequences which the applicant continues to suffer from must be taken into consideration.

18. In compliance with the provisions of Part 1 and § 4 of Part 4 of Article 392 of the Code of Civil Procedure of the Russian Federation, both court decisions and other judicial acts may be reviewed in connection to violation of the provisions of the Convention or the Protocols thereto established by the European Court.

19. The period for applying to the court for review of a final judicial act due to violation of the provisions of the Convention or the Protocols thereto established by the European Court should be calculated from the day following the day when the European Court's judgment became final in compliance with the provisions of Articles §§ 28, 42 and 44 of the Convention. If the three-month period for submitting applications for review, as provided by Article 394 of the CCivP RF is missed due to a valid reason (e.g. as the result of untimely receipt of the text of the European Court's judgment by the applicant or by the applicant's representative) it is subject to restoration.

20. It follows from Article 1 of the Federal Law on Ratification, interpreted in view of Article 46 of the Convention, that during review of the judicial act (which caused the applicant to lodge the application/complaint to the European Court) the court needs to take into consideration the legal positions of the European Court stated in the respective judgment, as well as the violations of the Convention or the Protocols thereto established by the Court.

21. In case the European Court establishes violations of the procedural rights of both participants in the case and persons not involved in the case but subject to involvement, the court, while reviewing a judicial act, having eliminated - if possible in view of the circumstances of the case - the violations of the Convention or the Protocols thereto, may deliver a similar judicial act (Article 46 of the Convention interpreted in the view of the Recommendation on re-examination).

22. If a court decision has been executed by the moment when the judgment of the European Court, stating that delivery of this decision had violated the provisions of the Convention or the Protocols thereto, became final, then quashing of such a decision upon newly established circumstances due to the aforementioned judgment of the European Court shall prevail over the principle of legal certainty (Article 46 of the Convention, interpreted taking into consideration the Recommendation on Review). In case of quashing of an executed court decision and delivering after a new examination of the case a decision on full or partial dismissal of the claim or the ruling on termination of the proceedings in the case or on the leaving the application without consideration, reversal of execution of court decision is effected, except for the cases indicated in Article 445 of the CCivP RF.

23. If the applicant lodges a claim for reimbursement of damage due to violation of the provisions of the Convention or the Protocols thereto established by the European Court, the courts need to take into consideration the grounds of the just satisfaction awarded to the applicant for enforcement of Article 41 of the Convention. For example, the applicant's claim for monetary compensation of non-pecuniary damage caused as the result of inhuman treatment contrary to Article 3 of the Convention, which took place at a certain period, cannot be satisfied if the European Court has already awarded a compensation of the said damage on the same grounds.

At the same time, refusal to satisfy the applicant's claim for a monetary compensation of non-pecuniary damage solely in view of the circumstance that the European Court has not awarded compensation of such damage to the applicant is not allowed, only if the Court has not found that the fact of established violation of the Convention or the Protocols thereto was itself a sufficient compensation of non-pecuniary damage.

24. The European Court does not establish the guilt of particular persons in committing actions (failing to act) contrary to the Convention or the Protocols thereto. In this connection during examination of subrogation claims based on § 31 of Article 1081 of the Civil Code of the Russian Federation a court needs to establish the existence of respective persons' guilt, if only the law does not provide for reimbursement of the damage in absence of guilt (§ 2 of Article 1064 of the Civil Code of the Russian Federation).

25. In order to read the texts of the judgments in the Russian language delivered by the European Court both in respect of the Russian Federation and other states which are parties to the Convention, the courts are recommended to use, among other sources, the Reference information system *Mezhdunarodnoye Pravo* ("International Law") developed by the Supreme Court of the Russian Federation

and installed in the departmental profile of the State automated system Pravosudiye (“Justice”) as well as HUDOC database of the European Court:
<http://hudoc.echr.coe.int/sites/eng>.

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