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## The domestic status of the European Convention on Human Rights in Russian law

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The first sentence of Art. 15(4) of the Russian Constitution clearly identifies the Russian Federation as a monist country, stating that "the international treaties signed by the Russian Federation shall be a component part of its legal system." It is therefore not necessary to transform these treaties into the domestic legal system in order for a judge to apply the provisions of international law.

The most important conclusion is that there is no bar to the domestic use of the interpretation of the European Convention on Human Rights (ECHR). The case law of the European Court of Human Rights (the Court) may thus be gradually transformed into Russian domestic jurisprudence.<sup>1</sup> According to the last paragraph of Art. 1 of the Law 'On the Ratification of the Convention', the Russian Federation recognises the compulsory jurisdiction of the Court with regard to the interpretation and application of the Convention.

Thus, theoretically there is no difference between the Convention and, for example, the Russian Civil Procedure Code in terms of their implementation in national courts. Indeed, the legal order set down by the Constitution is more favourable towards the Convention. The second sentence of Art. 15(4) of the Constitution sets out the priority of an international treaty over national statutes, stating that "[i]f an international treaty of the Russian Federation stipulates other rules than those stipulated by the law, the rules of the international treaty shall apply." The Convention is accordingly placed in between the Constitution on the one side and federal constitutional laws and federal laws on the other side.

The Constitutional provisions concerning the status of international law were reaffirmed in the 1996 Federal Constitutional Law 'On the Judicial System of the Russian Federation'. According to Art. 3 of the 1996 Law, all Russian courts must apply generally

recognised principles and norms of international law and international treaties of the Russian Federation.

However, an obligation to apply international law provisions was expressed for the first time by the Constitutional Court even before the 1993 Russian Constitution and any other laws mentioned earlier entered into force. Danilenko has noted that, "while the previous Constitution [of the RSFSR of 12 April 1978] lacked a clear rule declaring international law to be part of the land, the Constitutional Court, in the Labour Code Case, stated that all Russian courts should 'assess the applicable law from the point of view of its conformity with the principles and rules of international law'."<sup>2</sup>

A later judgment - by the post-1993 Constitutional Court - is significant due to its innovative interpretation of Art. 46 of the Constitution. In the Case Concerning Arts. 371, 374 and 384 of the Criminal Procedure Code, the Constitutional Court provided an interpretation that "established an obligation to give direct domestic effect to decisions of international bodies, including the European Court of Human Rights."<sup>3</sup>

The most unusual element of the machinery for implementing domestic law within the Russian legal system is the practice of issuing 'Regulations' (*postanovleniia*) or 'guiding explanations' (*rukovodiaschie raziasneniia*) passed by the Plenum of the Supreme Court and the Plenum of the Supreme Arbitration (Commercial) Court of the Russian Federation.

The first Regulation by the Supreme Court relating to the issue of implementation of international law was the 1995 Regulation 'On Some Questions Concerning the Application of the Constitution of the Russian Federation by Courts', section 5 of which instructed

lower courts to apply international law. It should be pointed out that here the Supreme Court instructed lower courts to apply international law, but it did not suggest how the law should be applied.

The first Regulation by the Supreme Court entirely devoted to the

implementation of international law was the regulation 'On the Application by Courts of General Jurisdiction of the Generally-recognized Principles and Norms of International Law and the International Treaties of the Russian Federation', which was passed in 2003 - five and a half years after the ECHR entered into force (the 2003 Regulation). Although still limited, this Regulation was more advanced in terms of clarifying for judges their obligation to apply international law provisions - the ECHR in particular.

Regarding the ECHR, there are several points to emphasize. First of all, the Supreme Court again stressed the obligatory direct applicability of international treaties, and in particular the Convention, and its priority over national laws. The Supreme Court also stated that, according to Art. 31(3)b of the Vienna Convention on the Law of Treaties, when applying the Convention judges should interpret the treaty by taking into account any subsequent practice of a treaty body. For the first time it was stressed that non-application of an international treaty (including non-application of the treaty itself, the application of a treaty that is not applicable under particular circumstances, and the incorrect interpretation of a treaty) can bear the same consequences as non-application of the domestic law - namely, the quashing or altering of a judgment.<sup>4</sup> Another feature of the 2003 Regulation is that it provided a brief overview of European Court case law on Arts. 3, 5, 6, and 13 of the ECHR, albeit without mentioning any specific cases.

Regarding the Supreme Arbitration Court of the Russian Federation, to date, the Plenum of the Supreme Arbitration Court has passed no Regulations on the domestic implementation of the Convention. However, there is one document written by the Chief Justice of the Supreme Arbitration Court which

the Supreme Arbitration Court entirely devoted to this issue: On the Main Provisions Applied by the European Court of Human Rights for the Protection of Property Rights and Right to Justice.<sup>5</sup> It consists of very brief summaries of the

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main provisions applied by the European Court on the issues of the protection of property and right to justice, and it advises on applying the Convention in the administration of justice at the domestic level. However, the document is very brief. There are no citations to the particular cases that served as a basis for this decision. The value of such a letter explaining the interconnection between the jurisdiction of the arbitration courts and the jurisdiction of the ECHR, and

informing arbitration judges about some provisions of the case-law of the ECHR, even in this brief form, cannot be overestimated. From December 1999 to October 2003,<sup>6</sup> this document was the only official document providing judges with information on the domestic implementation of the Convention.<sup>7</sup>

1 Danilenko, "Implementation of International Law in CIS States: Theory and Practice," *European Journal of International Law* 10:1 (1999): 68.

2 *Ibid.* 56.

3 *Ibid.* 68.

4 Section 9 of the 2003 Regulation. In Section 4 of

the Plenum of the Supreme Court Regulation no. 23 of 19 December 2003 'On Court Decision', the Supreme Court stressed the necessity of citing in the declaration section of the decision the material law applied, inter alia, the Convention, by taking into account judgments of the European Court of Human Rights.

5 Informational letter by the Chief Justice of the Supreme Arbitration Court of the Russian Federation no C1-7/CMII-1341 of 20 December 1999.

6 The month in which the 2003 Regulation was issued.

7 For more details on the domestic application of the Convention and the ECHR case-law please refer to Anton Burkov, *The Impact of the European Convention on Human Rights on Russian Law: Legislation and Application in 1996-2006* (Stuttgart: ibidem-Verlag, 2007), [www.suryajnik.ru/bal/ibidem](http://www.suryajnik.ru/bal/ibidem).