

Book Authors' Conference
“Russia and the European Court of Human Rights: Successes
and Failures of Socialization”

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**THE USE OF THE EUROPEAN HUMAN RIGHTS LAW
IN RUSSIAN COURTS**

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Harmonization of Russian Law with the Convention

- Russian Constitution and legislation:
 - The Constitution provides that international treaties (i.e., the Convention) take supremacy over national law, supremacy over the Constitution is questioned by the Russian Constitutional Court
- Constitutional Court:
 - ECHR judgments are part of the Russian legal system (2 February 2007) even against other states
- 2003 and 2013 Supreme Court Regulations:
 - “Judges should interpret the treaty by taking into account any subsequent practice of a treaty body [ECHR]” even against other states
 - Non-application of the Convention is ground to quash a judgment

Convention in the Constitutional Court's practice

- Refer to the ECHR case-law, even against other than Russia states
- Reconsiders the place of the Convention in the Russian legal system
- The ECHR more often is not persuaded with the reasoning of the CC decisions.
- *Khoroshenko v. Russia*, “The ECHR is not persuaded by the [Constitutional Court’s] argument”. The ECHR’s GC “overruled” the decision of the Constitutional Court.

Convention in the Supreme Court's Practice (1998-2003 and 2004-2008)

- Before the 2003 Regulation
 - Out of 3911 judgments, ONLY 12 judgments mention the Convention
 - Cases contain no reference to ECHR case-law
- After 2003
 - Out of 3723 judgments, ONLY 32 mention the Convention
 - NEW! -- The Supreme Court addressed the ECHR case law in only 6 of 32 judgments
 - No (or brief) mentioning of parties' Convention arguments
 - No substantial assessment of parties' arguments in the Court's judgments

Convention in the Supreme Court's Practice (2009-2015)

- Regular quashing of lower court judgments in force on the ground that a violation of the Convention established by the ECHR is an admissible ground for reopening a criminal case (but *Zakharkin* case <http://sutyajnik.ru/news/2011/11/1891.html>)
- Publishing judgments of the Presidium of the Supreme Court in which the Supreme Court applied the Convention
- regular review of the ECHR case-law
- not aware of the reversal of courts' decisions on the basis of non application of the Convention

Convention in District Courts' Practice

- Applicants' arguments based on ECHR case law prompt implementation of the Convention (often argued by NGO lawyers)
- Correlation between persistent applicant arguments based on ECHR case-law and the quality of the Convention's implementation by the courts
- NGOs succeeded in the application of the Convention due to their persistence
- Anatoliy Kovler says "*the further you are from Moscow courts, the better courts apply the Convention.*"

Laboratory work

- we selected cases with
 - (1) issues which has never been considered by the ECHR in cases against Russia but
 - (2) those issues are identical to matters decided by the ECHR against other states.
 - (3) if resolving the case according to the Convention, this would mean reform of the legislation or judicial or other national practice

Convention is not applicable in such cases

- The case of *Sablina and others* against the Moscow City Hospital No1 on illegal secret removal of organs from dead donor (*Petrova v. Latvia*, *Elberte v. Latvia*)
- *Korolevs* against the Correctional colony No 18 and FSIN in the right to artificial insemination (*Dickson v. UK*)

Judicial inventions

- Judges ignore parties' arguments -> we started to advance only one legal argument which is based on the Convention
- judges started to mention our Convention arguments but in a summary way: "the ECHR case is not relevant as the facts are different" (no explanation follows)

More advanced judicial inventions

- *Korolev*: "Taking into account seriousness of the crimes committed by N.V. Korolev, ... punishment given to Korolev (life imprisonment) and connected to it limitations are proportionate to committed crime and his punishment is **just vengeance/retribution** for crimes committed by him..." [**«справедливая кара»**]

ECHR judgments not against Russia

- In *Sablina* case a judge stated - the ECHR case the applicants referred to was not against Russia therefore it is not applicable to the case in question. This is despite the fact that the Supreme Court and the Constitutional Court are of a different opinion.

Other types of indirect ignorance of the Convention

- openness of the court hearings (*Razvyazkin v. Russia*),
- public announcement of reasons of judgments (*Ryakib Biryukov v. Russia*),
- participation of the prosecutor (*Korolev v. Russia No 2*),
- lack of presence of the prosecutor but delivery of conclusions by the prosecutor,
- lack of desk for the lawyer of the applicant