

【Special Features: Multiple Aspects on Constitutionalism –Asian “Contexts” and its Logic】

**Revision of International Law by the Constitutional Court of Russia:
Between National and International Law**

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Abstract

For the past few years, the relationship between the Russian Constitutional Court and the European Court of Human Rights (ECHR) has been most acute. Tension between these two courts arose about seven years ago in 2013 after the ECHR effectively denied a decision of the Constitutional Court of Russia in the case of Constantine Markin. The Constitutional Court subsequently refused to recognize the decision of the ECHR in this case. In the future, the right of the Constitutional Court not to recognize such decisions if they are deemed as contrary to the national Constitution was further amended by the Law on the Constitutional Court.¹

However, a new wave of interest in the relationship between national and international law and constitutional principles has emerged just recently. On January 15, 2020, in a speech to the Russian Parliament, President Vladimir Putin proposed to amend the current Constitution of 1993 and formalize the priority of national law over international law.² On July 1, 2020, a popular referendum was held, at which the amendments proposed by the President were adopted. According to these amendments, the Constitutional Court has the right to disqualify decision of international courts (to allow the government not to execute it on the territory of the Russian Federation) if it contradicts the Constitution of Russia and its main principles.

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¹ Federal Constitutional Law N 7-FKZ "On Amendments to the Federal Constitutional Law" On the Constitutional Court of the Russian Federation " Entered into force on December 14, 2015. A new version of this law is currently in force: Federal Constitutional Law N 5-FKZ "On Amendments to the Federal Constitutional Law" On the Constitutional Court of the Russian Federation " Entered into force on November 9, 2020.

² https://www.washingtonpost.com/world/europe/putin-proposes-strengthening-parliament-even-while-keeping-his-own-powers-intact/2020/01/15/695eac6a-36e5-11ea-a1ff-c48c1d59a4a1_story.html

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I. Introduction

On January 15, 2020, in his speech to the Russian Parliament, President Putin proposed to amend the current Constitution and formalize the priority of national law over international law. Despite the fact that such a proposal of the President was perceived negatively by the Russian legal community,³ however, already on March 11 the Russian Parliament accepted the proposal and on March 14th President Putin signed it.”⁴ Two days later, at the request of President Putin, the Constitutional Court of Russia issued an opinion on whether the said law complies with the provisions of the current Constitution of 1993.⁵ In particular, the Court decides that the said amendment does not imply a refusal of the Russian Federation from national treaties and fulfillment of its international obligations. In the Court's opinion, the new provisions of the Constitution are not aimed at refusing to comply with international treaties and decisions of interstate jurisdictional bodies based on them. However, the priority of the Constitution of Russia and its principles make it possible to find new ways of executing "controversial" decisions, which are supposed to be optimal for all participants.⁶

The Russian Federation joined the Council of Europe in 1996 and assumed its obligations to democratize and liberalize law in Russia, to protect human rights and freedoms, and to proclaim the rule of law.⁷ Council of Europe duties included the requirement to comply with the requirements of

³ For example, a huge number of discussions mainly condemning the amendments could be observed on social networks.

⁴ Official website of draft laws <https://sozd.duma.gov.ru/bill/885214-7>

⁵ Constitutional Court Opinion No 1-3. March 16, 2020 <http://doc.ksrf.ru/decision/KSRFDecision459904.pdf>

⁶ Par. 3.3 of Constitutional Court Opinion No 1-3. March 16, 2020

⁷ Federal law No. 54-FZ, «On the Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols to them: ‘The Russian Federation in accordance with Article 46 of the Convention recognizes ipso facto and without

a supranational judicial body. Admittedly, decisions of the ECHR have indeed played a positive role. For example, the law on compensation for delays in trials was adopted only after the number of cases in the ECHR from Russian applicants with such claims exceeded one thousand. The Constitutional Court itself, until 2011, often used links on decisions of the ECHR as additional arguments to its position. The concept of "dignity of the person," which is present in the Constitution of Russia, has also been filled in many ways with meaning and content thanks to the practice of the ECHR.⁸ Moreover, the Constitution of the Russian Federation, adopted by popular referendum on 12 December 1993, contains many positions on human rights taken verbatim from the ECHR and the main documents of the United Nations.

However, after joining the Council of Europe, the largest number of complaints of violations of the European Convention for the Protection of Human Rights and Fundamental Freedoms began to come from Russia. For a long time, the ECHR scolded Russia for its poor work in respecting human rights and freedoms, but there was no open confrontation. With the emergence of the case "Konstantin Markin v. Russia," the differences between the ECHR and the Constitutional Court turned into open confrontation.

II. The Russian Constitution and International Law

As mentioned above, one of President Putin's recent proposals⁹ concerns a change in approach to international law. Under Article 15 of the Constitution: «The universally recognized principles and norms of international law and international treaties of the Russian Federation are an integral part of its legal system. If an international treaty of the Russian Federation establishes rules other than those provided for by its domestic law, then the rules of the international treaty will apply».

In other words, following this general principle, international treaties prevail over Russian laws. This is already a lot, but not enough, to recognize the absolute primacy of international law over national law. International agreements prevail over national laws, but not over the 1993 Constitution and special constitutional laws. Eventually, international treaties must be ratified in accordance with the federal law on international treaties in an appropriate manner. Consequently, the Russian Constitution, although sufficiently open to international law, does not explicitly provide for the transfer of part of its sovereignty to inter-state organizations.

special agreement the compulsory jurisdiction of the European Court of Human Rights concerning the interpretation and application of the Convention and its Protocols in cases of alleged violation by the Russian Federation».

⁸ Article 21 of the Constitution: "The dignity of the individual shall be protected by the State. Nothing can be the basis for his diminution. "

⁹ <http://kremlin.ru/events/president/news/62617> (access date 03.03.2021)

Article 15 in chapter 1 of the Constitution is unchanged. In order to amend this Article, it is necessary to follow a rather complex procedure, to convene a special body - the Constitutional Council - and to adopt a new Constitution. The changes proposed by President Putin did not concern Article 15, but Article 79 of the Constitution. In the previous edition of Article 79, it was said that the Russian Federation can participate in international treaties if this does not contradict the principles and norms of the Constitution of Russia, and also does not violate the rights and freedoms of citizens and other persons. In the new edition, the legislator added a requirement according to which decisions of international bodies cannot be executed if they are adopted on the basis of an international treaty, in which Russia is one of the parties, but contradicts the Constitution. The Russian Constitutional Court is responsible for interpreting the act of an international body for its conformity with the Constitution.

III. The Case of *Konstantin Markin v. Russia*

The case *Konstantin Markin v. Russia* is a stumbling block between the Russian Constitutional Court and the ECtHR.¹⁰ Konstantin Markin served under contract in the Russian Armed Forces. He asked the command of the military unit in which he served to grant him leave to care for his child until the child reached the age of three. After his divorce from his wife, Markin was left alone with three children, the youngest of whom was under three years old.¹¹ He was granted three months leave. This order was subsequently cancelled by military command due to the absence of documents confirming the right to receive leave. The grounds for refusing parental leave were that under the federal law on the status of military personnel, such leave could be granted only to women. This law says nothing about men. Markin filed a complaint with the Constitutional Court, in which he stated that the law on the status of military personnel was discriminatory and placed men and women in an unequal position.

In 2009, the Constitutional Court rejected Markin's claims, concluding that the legislator had the right to restrict rights and freedoms¹² of employees who perform constitutionally significant functions. The Constitutional Court concluded that such restrictions and differential treatment were justified because otherwise military personnel would not be able to perform their duties. In other words, the Court considered that if every male soldier had such a right, it could lead to disorganization in the army.

Markin appealed the case to the ECtHR, which ruled in 2012, finding violations of Article 8 (the right to one's family life) and Article 14 (discrimination) of the ECHR. The ECtHR openly criticized

¹⁰ ECtHR, *Konstantin Markin v. Russia*, No. 30078/06 (Oct. 7, 2010)

¹¹ According to other unofficial reports, he continued to live with his wife, but for some reason he needed such a long vacation.

¹² Decision of the Constitutional Court of the Russian Federation of January 15, 2009 No. 187-O-O <http://doc.ksrf.ru/decision/KSRFDecision18793.pdf> (access date 01.17.2020)

the Constitutional Court for injustice and its failure to properly test the balance of competing interests between maintaining the effectiveness of the army and protecting military personnel from discrimination in their family lives. ECtHR said: "The refusal of men on military parental leave when women are entitled to such leave is not justified". The ECtHR pointed to the evolution of modern society and to the equal participation of men and women in child care. The ECtHR recognized that some exceptions could be made against military personnel for the sake of national security, but these exceptions should not be discriminatory.

This decision of the ECtHR caused a negative reaction both in the Constitutional Court itself and among Russian politicians. For example, the Chairman of the Constitutional Court of Russia Valeriy Zor'kin quite strongly criticized the position of the ECtHR, noting that before *Markin's case* the ECtHR never questioned the approach of the Constitutional Court, at that time the Constitutional Court regularly used the practice of the ECtHR in its work. Every decision of the ECtHR is not only a legal but also a political act. "When such decisions are taken to benefit human rights in our country, Russia will always strictly implement them. But when the decisions of the Strasbourg Court are doubtful from the point of view of the essence of the European Convention itself, and even more directly affect national sovereignty, fundamental constitutional principles, Russia has the right to develop a defensive mechanism against such decompressions. Namely, it is through the prism of the constitution that the problem of correlation of decisions of the Russian Constitutional Court and the European Court must be solved. ".¹³ The decision came to be seen as a direct challenge to the Constitutional Court by the ECHR. ECtHR was accused of showing contempt for the Supreme Judicial Authority of Russia.¹⁴ Officially, the Constitutional Court continued to insist that there had been no violation of the Constitution of the Russian Federation on gender equality in the *Markin case*. The Constitutional Court also upheld earlier arguments on sovereignty, and discretion in the selection of national priorities.

However, the argument of a limiting on national sovereignty was somewhat far-fetched. One of the fundamental principles of democracy is respect for the supreme law of the country. Preferring a domestic constitution's supremacy over an international treaty may really just obscure a preference for a domestic court over an international tribunal (which is harder to control) as the final interpretive

¹³ Valeriy Zor'kin, "Predel Ustupchivos'ti," Rossiiskaya gazeta - No. 5325 (246), October 29, 2010.

¹⁴ Aksenova Marina, Marchuk Iryna. Reinventing or rediscovering international law? The Russian Constitutional Court's uneasy dialogue with the European Court of Human Rights //I•CON (2018), Vol. 16 No. 4, 1322–1346

authority. Even assuming a constitution's prioritization, how does one know when an international treaty contradicts domestic constitutional law? Such contradictions may not be obvious.¹⁵

Moreover, such conclusions of the Constitutional Court are not consistent because by ratifying the ECHR, the Russian Federation recognized the role of the ECtHR in interpreting the Convention. Thus, there is no *prima facie* (renunciation of state sovereignty) upon voluntary accession to the convention. Ratification of the treaty is an exercise of sovereignty. Therefore, it seems too late to argue that state power has "supremacy, steadfastness and self-sufficiency."¹⁶

During the ratification of the Convention, Russia agreed to comply with the decisions of the ECtHR. Perhaps, when it was beneficial, the Russian government believed that the Convention was consistent with Russian constitutional law. However, subsequently, the evolutionary interpretation of the provisions of the ECHR led to a conflict between international law and the domestic legislation of Russia, which will be discussed later. However, this interpretation of the provisions of the Convention has always existed, and the Russian Federation should have been aware of the consequences of ratifying the ECHR. Article 32 of the ECHR provides that the jurisdiction of the ECtHR extends to all questions concerning the interpretation and application of the Convention. Article 46 provides that the parties undertake to comply with the final judgment of the Court in any case to which they are parties. At the same time, international law and treaties, based on it, provide an opportunity for states to communicate their other obligations, which may conflict with those imposed by an international agreement. The ECHR reserves the discretion or freedom of action of states to choose the best course of conduct and thereby strike a balance between their international obligations and their domestic obligations. For example, in the case of *AO Yukos v. Russia*, such an obligation was the social obligations of the Russian government to its citizens. More details about this case will be discussed in a separate chapter.

However, interaction between supranational judicial organizations and national authorities is essentially a dialogue, as it usually involves some form of first or last assessment. The ECtHR usually assesses the situation of specific human rights guaranteed by the ECHR. National authorities may also enter into the dialogue when charged with enforcing the decisions of the ECtHR.¹⁷ However, normal relationships between these two actors are only possible if each side respects the other. The state is supposed to effectively implement the decisions of an international body, and the international body

¹⁵ Kahn J. The Relationship between the European Court of Human Rights and the Constitutional Court of the Russian Federation: Conflicting Conceptions of Sovereignty in Strasbourg and St Petersburg// *The European Journal of International Law* (2019) Vol. 30 no. 3. River 935.

¹⁶ *Ibid*

¹⁷ Aksenova Marina, Marchuk Iryna. Reinventing or rediscovering international law? The Russian Constitutional Court's uneasy dialogue with the European Court of Human Rights // *I•CON* (2018), Vol. 16 No. 4, 1322–1346.

in turn respects the right of the state to a constitutional identity as long as this identity do not engage in a strong confrontation with the ECtHR.

Tensions between the ECtHR and the Constitutional Court are permissible, since the ECtHR, following its own views, can interpret national legislation more broadly than the national Constitutional Court.

When an ECtHR decision conflicts with a country's national law, the ECtHR grants broad discretionary powers to the state, looking for suitable ways to implement the solution. In the end, the state must find a way to harmonize its domestic legislation with its international obligations, even if it does not like the decisions of the ECtHR. If the state-party does not bring its legislation in line with the decisions of the ECtHR, it would then violate the obligations to the Convention.

Let's turn again to the case of Konstantin Markin. He appealed to the District Military Court to review the original case on the basis of the decision of the ECtHR. The reviewing judge was presented two judicial decisions issued by the Constitutional Court in 2009, and the ECHR in 2012.

Not knowing how to proceed, the judge decided to suspend the case and appealed to the Constitutional Court for an explanation of what he perceived as an uncertain situation. The Constitutional Court expressed a clear position that the decision it had taken earlier was not subject to appeal¹⁸. The Court found no violations of the Constitution in Markin's case. Consequently, the Court's findings could not be questioned, and the lower courts had to follow the position of the Constitutional Court.

IV. The Case of *Anchugov and Gladkov v. Russia*

Even after a second decision was taken against Markin by the Constitutional Court, there was no serious confrontation between the Russian and international judicial bodies. The open conflict broke out as a result of the adoption by the ECtHR of a very controversial decision in the case *Anchugov and Gladkov v. Russia*.¹⁹ Two citizens; Sergey Anchugov and Vladimir Gladkov were convicted of serious crimes, including murder, and served prison sentences. Anchugov and Gladkov appealed against the refusal of the election commission to allow them to participate in the parliamentary elections in 2003 and 2007 as voters. The Electoral Commission justified its refusal by norms establishing a constitutional ban on participation in elections for citizens serving sentences for criminal offences committed.

¹⁸ Decision of the Constitutional Court of the Russian Federation of December 6, 2013 No. 27-P <http://doc.ksrf.ru/decision/KSRFDecision147711.pdf> (access date 01.17.2020)

¹⁹ *Anchugov and Gladkov v. Russian Federation*, App. No. 11157/04 (ECtHR, July 4, 2013)

Under Article 32 of the Russian Constitution, citizens found by a court to be incapacitated, as well as those held in places of deprivation of liberty on the basis of a court sentence, are not entitled to vote or be elected to office. In other words, the Constitution establishes an absolute prohibition on certain categories of citizens from exercising electoral rights. Consequently, Anchugov and Gladkov were excluded from the voting on a reasonable basis in accordance with the provisions of the Constitution. The complainants claimed that the absolute prohibition against participating in the elections was excessive. They argued that they cared about the future of their country and would like to participate in the political life of society.

It is important to note that the ECtHR had previously held the position that convicts who had committed serious crimes such as murder could certainly be deprived of the right to vote.²⁰ However, the ECtHR accepted the complainants' arguments and found the absolute prohibition to be contrary to the ECHR. The Ministry of Justice of the Russian Federation asked the Constitutional Court to clarify whether it was legitimate to follow the ECtHR decision.

As a result, on 19 April 2016, the Constitutional Court published its decision confirming the right of the Russian Federation not to comply with the decisions of the ECtHR, which were contrary to the provisions of the Constitution of the Russian Federation.²¹ The Court found that the decision of the ECtHR in the case of Anchugov and Gladkov could not be implemented, but it did not directly reject the decision of the ECtHR as long as it tried to implement a diplomatic approach. Also, the Court did not rule out on the introduction in the future of such an approach to punishments that would restrict freedom, but would not prevent a convicted from exercising mentioned rights.

The essence of the Court's decision was that there was an unconditional decree of the Constitution, which could not be canceled by the decision of the ECtHR. The article of the Constitution can only be changed by adopting a new Constitution. However, the Constitutional Court concluded that despite such a strict prohibition, the legislator could develop a differentiated approach to different groups of prisoners, for example, depending on the severity of the crime committed.

With regard to Anchugov and Gladkov, the Court decided that given the gravity of their crimes, they were justly deprived of the right to vote. Besides, it was also impossible to restore their rights, as the elections had already taken place and they would not have been able to vote anyway. Perhaps, in this case, the Russian Constitutional Court showed more diplomacy and restraint than the ECtHR. The Constitutional Court at least allowed the possibility that the legislator could in the future adopt an approach in which some prisoners could retain the right to vote. In turn, the ECtHR was unconditional

²⁰ Hirst v. Great Britain, App. No. 74025/01 (ECtHR, October 6, 2005)

²¹ Decision of the Constitutional Court of the Russian Federation of April 19, 2016 No. 12-P <http://doc.ksrf.ru/decision/KSRFDecision230222.pdf> (access date 01.18.2020)

in its judgment. Why the ECtHR decided to fundamentally reconsider its past position remains unknown. The ECtHR itself in its decision did not explain why it changed its position.

V. *The Yukos Oil Company Case*

If in the case of Konstantin Markin the Russian Federation could explain its unwillingness to implement the decision of the ECtHR, and in the case of *Anchugov and Gladkov v. Russia* such a decision is quite reasonable, then in the case of the oil company Yukos everything is different. After the very controversial decision on the complaints of Yukos shareholders by the European Court of Human Rights, the relations between the ECtHR and the Constitutional Court of Russia went into open confrontation.

Even before the hearing at the end of 2018, the Constitutional Court adopted Resolution No. 21-P of July 14, 2015. According to this Resolution, the lower courts, when reconsidering the case after the ECtHR, can appeal to the Constitutional Court with the question of whether the decision of the ECtHR violates the provisions of the Constitution and thereby call into question the possibility of executing the decision of the ECHR. Thus, the Court had already then effectively called on the lower courts to question the decisions of the ECtHR and, if necessary, to seek clarification from the Constitutional Court.

In December 2015, a new chapter entitled "Consideration of cases on the possibility of implementing decisions of the inter-State body for the protection of human rights and freedoms" was added to the federal constitutional law on the Constitutional Court of the Russian Federation. It follows from the new provisions that a special state body (in this case, the Ministry of Justice of the Russian Federation) was given the opportunity to apply to the Constitutional Court of the Russian Federation for an explanation of whether it is possible to enforce the judgment of the ECtHR if it does not comply with the Constitution of the Russian Federation. Thus, the legislator effectively legitimized the previously stated position of the Constitutional Court on granting it new powers.

The dispute between former shareholders of the oil company Yukos and Russia had stretched on for ten years until its consideration by the ECtHR. In 2004, Yukos shareholders requested compensation from the Russian government to the ECtHR in the amount of almost 38 billion euros for the actions of the Russian government that led to the bankruptcy of the company. After a lengthy admissibility trial, which was resolved only in 2009, the ECtHR ruled on the merits in September 2011.²²

²² Case of OAO Neftyanaya Kompaniya Yukos v. Russia (App. No. 14902/04) Judgment (Merits) (Sept. 20, 2011). [https://hudoc.echr.coe.int/eng#{"itemid":\["001-106308"\]}](https://hudoc.echr.coe.int/eng#{) (access date 01.18.2020)

The ECtHR found that Russia acted in violation of Article 6 of the ECHR without giving Yukos sufficient time to prepare their case before the national courts. The ECtHR found that these procedural violations restricted the rights of the defense and resulted in a violation of the right to a fair trial under Article 6 of the Convention.

In addition, the ECtHR found two violations of Article 1 of Protocol I (Protection of Property), in particular with regard to the imposition of fines by the authorities in accordance with Russian tax legislation in 2000-2001 and their inability to fairly carry out their activities in relation to Yukos.

According to the decision of the ECtHR, the Russian Federation had to pay compensation to the former shareholders of Yukos in the amount of about 1.9 billion euros. Such an unprecedented amount of compensation, awarded in the context of a human rights trial, caused a negative reaction in Russian political and legal circles, which culminated in the appeal of the Russian Ministry of Justice to the Constitutional Court demanding a decision on the impossibility of execution of the decision.

The essence of the dissatisfaction was that the decision of the ECtHR was of a political rather than a legal nature and violated Russia's sovereignty. The amount that was due was too much for Russia's budget. In this regard, the Ministry of Justice asked the Constitutional Court to recognize the impossibility of implementing the decision of the ECtHR.

The Constitutional Court took an unprecedented step and diminished the role of international human rights law in Russia in the hierarchy of sources of law. The court decided to emphasize only the subsidiary role of the ECtHR. The Constitutional Court considered that the Russian Federation is not obliged to comply with all decisions of the ECtHR if they contradict the Constitution or its principles.²³

The decision of the Russian Constitutional Court in the Yukos case repeats the judicial basis in the decision in the *Anchugov and Gladkov* case. The Court reiterated the primacy of the national Constitution. While recognizing the primacy of the Constitution, the Court, in its reasoning, tried to find an appropriate balance between the spirit and letter of the European Convention and the Russian Constitution in the execution of the Court's judicial decisions.²⁴

The Constitutional Court in the Yukos case found that failure to comply with the decisions of the ECtHR could be justified in cases where the Constitution provided for a higher level of protection of human rights than those guaranteed by the European Convention in balance with the rights and freedoms of others. The Court indicated that the payment of such a huge sum to Yukos shareholders

²³ Decision of the Constitutional Court of the Russian Federation of January 19, 2017 No. 1-P <http://doc.ksrf.ru/decision/KSRFDecision258613.pdf> (access date 01.18.2020)

²⁴ Aksenova Marina, Marchuk Iryna. Reinventing or rediscovering international law? The Russian Constitutional Court's uneasy dialogue with the European Court of Human Rights // *I•CON* (2018), Vol. 16 No. 4, 1322–1346

would adversely affect the performance of the Russian government in fulfilling social obligations towards its citizens.

Article 53 of the ECHR does provide that its provisions cannot be interpreted in such a way that it would lead to the diminution or restriction of human rights and freedoms, which are provided for by the national legislation of the parties. In particular, article 1 provides that the member states have undertaken to ensure to everyone under their jurisdiction the rights and freedoms defined in Articles 2-18 of the Convention. Article 32 provides that the ECHR has the power to interpret these rights. Finally, Article 46(1) states that the contracting parties undertake to abide by the final judgment of the Court in any case to which they are parties.

The Constitutional Court also found that despite the award by the ECHR of material damage to shareholders, such damage was caused by the illegal activities of the company Yukos. Specifically, the Court pointed out that Yukos had taken advantage of sophisticated illegal schemes to avoid paying taxes. However, the Constitutional Court has quite amicably ruled that illegal actions of an oil company and a large amount of payments do not exclude that Russia can voluntarily accept the decision of the ECtHR and pay some former shareholders, especially those who suffered financial losses as a result of illegal actions of the state authorities. However, such payment is possible only if Yukos pays its debts to creditors first.

1. Dissenting Opinions of the Judges in the Yukos Case Vladimir Yaroslavtsev and Konstantin Aranovsky

In this case, two judges expressed their dissenting opinions in which they disagreed with the conclusions of the Constitutional Court. Judges of the Russian Constitutional Court do not so often express their dissenting opinions, so each of them deserves special attention.

(1) Dissenting Opinion of Judge Vladimir Yaroslavtsev

Judge Vladimir Yaroslavtsev pointed out that Article 43 of the ECHR granted the right of any party to the case, within three months of the date of the chamber's ruling, to submit an application for referral to the Grand Chamber in exceptional cases. However, the Russian Federation did not exercise this right. According to Yaroslavtsev, the Ministry of Justice, addressing the Constitutional Court, was looking for easy ways to break the impasse instead of continuing the dialogue with the Committee of Ministers of the Council of Europe with a view to finding a balanced solution.²⁵

²⁵ Dissenting opinion of the judge Yaroslavtsev to the Decision of the Constitutional Court of the Russian Federation of January 19, 2017 No. 1-P <http://doc.ksrf.ru/decision/KSRFDecision258613.pdf> (access date 01.18.2020)

(2) Dissenting Opinion of Judge Konstantin Aranovsky

The second opinion in this case was expressed by Judge Aranovsky. Judge Aranovsky, like his colleague Judge Yaroslavtsev, argued that the Constitutional Court could not act as an arbitrator in the event of a disagreement between Russia, represented by the Ministry, and the ECHR. He also criticized the inconsistent position of the Russian Ministry of Justice, which did not agree with the ECHR in the part where the Court largely took the position of the Ministry itself. Moreover, in its objections, the Ministry participated in the discussion of the amount of fair compensation to the claimants, thus making it clear that the Russian Government was theoretically ready to pay compensation. However, Ministry later completely renounced its own position and challenged the very possibility of implementing the ECHR decision.²⁶

Judge Aranovsky also criticized the Ministry of Justice's arguments that such a substantial amount of compensation would deplete public welfare. In the judge's view, such a position would allow parties to the Convention to refuse each time to comply with the decisions of the ECHR with reference to the burden of social expenditure.

Judge Aranovsky also stated that, despite the fact that the amount awarded by the ECHR is really high, it must be paid. Since the States parties to the Convention did not initially discuss the size of the maximum amount that they are willing to pay as compensation, they can no longer waive such obligations. Therefore, the claim of excessive amount of compensation cannot be put forward as an argument of non-compliance with the decisions of the ECHR. However, Judge Aranovsky also criticized the decision of the ECHR, which awarded compensation to unidentified persons who did not take part in the court proceedings and did not confirm that they suffered losses. Ultimately, Judge Aranovsky concluded that both courts did not handle the case properly and acted as they wanted, not as they should.

Analyzing the decision of the Constitutional Court of Russia in the case of Yukos shareholders, it can be noted that this shows that the Court gave a broad interpretation of the Convention when it allowed the Russian government to defy its obligations, appealing to certain constitutional principles, such as the principle of state sovereignty and the principle of the welfare state.

VI. Conclusion

Even until recently, ambiguous language about the meaning of international law in the Russian Constitution has left room for questions about the weight of international law in the domestic legal

²⁶ Dissenting opinion of the judge Aranovsky to the Decision of the Constitutional Court of the Russian Federation of January 19, 2017 No. 1-P <http://doc.ksrf.ru/decision/KSRFDecision258613.pdf> (access date 01.18.2020)

order. However, the Constitutional Court of Russia, by its practice, has gradually built a hierarchy of sources of law, where Constitutional norms took precedence over international treaties. President Putin's constitutional amendments actually legitimized this approach.

Such mixed changes are taking place against the background of a growing number of complaints against Russia, including those related to Ukraine and Crimea.²⁷ Given the flurry of complaints against Russia in the ECtHR, it is likely that the number of cases in which the Russian Constitutional Court will allow Russian government not comply with the decisions of the ECtHR will only increase.

²⁷ By 2019, more than 6,000 individual statements https://www.echr.coe.int/Documents/CP_Russia_ENG.pdf (access date 01.19.2020)

