



Strasbourg, 23 February 2016

CDL-REF(2016)019

Opinion No. 832/2015

Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

JUDGMENT No. 21-P/2015
OF 14 JULY 2015

OF THE CONSTITUTIONAL COURT

OF THE RUSSIAN FEDERATION

IN THE NAME OF THE RUSSIAN FEDERATION

The Constitutional Court of the Russian Federation

Judgment

of 14th July, 2015 No. 21-P/2015

on the case concerning the review of constitutionality of the provisions of Article 1 of the Federal Law “On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols thereto”, Items 1 and 2 of Article 32 of the Federal Law “On International Treaties of the Russian Federation”, Sections 1 and 4 of Article 11, Item 4 of Section 4 of Article 392 of the Civil Procedure Code of the Russian Federation, Sections 1 and 4 of Article 13, Item 4 of Section 3 of Article 311 of the Arbitration Procedure Code of the Russian Federation, Sections 1 and 4 of Article 15, Item 4 of Section 1 of Article 350 of the Administrative Judicial Proceedings Code of the Russian Federation and Item 2 of Section 4 of Article 413 of the Criminal Procedure Code of the Russian Federation in connection with the request of a group of deputies of the State Duma

The Constitutional Court of the Russian Federation composed of the President V.D.Zorkin, Judges K.V.Aranovsky, A.I.Boitsov, N.S.Bondar, G.A.Gadzhiev, Yu.M.Danilov, L.M.Zharkova, G.A.Zhilin, S.M.Kazantsev, M.I.Kleandrov, S.D.Knyazev, A.N.Kokotov, L.O.Krasavchikova, S.P.Mavrin, N.V.Melnikov, Yu.D.Rudkin, O.S.Khokhryakova, V.G.Yaroslavtsev,

with participation of the representative of a group of deputies of the State Duma – deputy of the State Duma A.G.Tarnavsky, Plenipotentiary Representative of the State Duma to the Constitutional Court of the Russian Federation D.F.Vyatkin, Representative of the Council of Federation – Chairman of the Committee of the Council of Federation on Constitutional Legislation and State Construction, member of the Council of Federation A.A.Klishas, Plenipotentiary Representative of the President of the Russian Federation to the Constitutional Court of the Russian Federation M.V.Krotov,

guided by Article 125 (Item “a” of Section 2) of the Constitution of the Russian Federation, Sub-Item “a” of Item of Section 1, Sections 3 and 4 of Article 3, Section 1 of Article 21, Articles 36, 74, 84, 85 and 86 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”,

in an open session considered the case on the review of constitutionality of the provisions of Article 1 of the Federal Law “On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols thereto”, Items 1 and 2 of Article 32 of the Federal Law “On International Treaties of the Russian Federation”, Sections 1 and 4 of Article 11, Item 4 of Section 4 of Article 392 of the Civil Procedure Code of the Russian Federation, Sections 1 and 4 of Article 13, Item 4 of Section 3 of Article 311 of the Arbitration Procedure Code of the Russian Federation, Sections 1 and 4 of Article 15, Item 4 of Section 1 of Article 350 of the Administrative Judicial Proceedings Code of the Russian Federation and Item 2 of Section 4 of Article 413 of the Criminal Procedure Code of the Russian Federation.

The reason for the consideration of the case was the request of a group of deputies of the State Duma. The ground for the consideration of the case was the discovered uncertainty of whether the legislative provisions contested in the request are in conformity with the Constitution of the Russian Federation.

Having heard the report of the Judge-Rapporteur S.P.Mavrin, statements of representative of the parties, interventions by the representatives invited to the hearing: G.V.Kuzmin from the Ministry of Foreign Affairs of the Russian Federation, M.A.Melnikova from the Ministry of Justice of the Russian Federation, T.A.Vasilyeva from the Prosecutor General of the Russian Federation, having examined submitted documents and other materials, the Constitutional Court of the Russian Federation

e s t a b l i s h e d:

1. By the Federal Law of 30th March, 1998 No. 54-FZ “On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols thereto” the Russian Federation ratified the Convention for the Protection of Human Rights and Fundamental Freedoms and a number of Protocols thereto signed earlier, on 28th February, 1996. In accordance with Article 46 of this

Convention the Russian Federation in particular, as indicated in Article 1 of the said Federal law, recognised *ipso facto* and without special agreement the jurisdiction of the European Court of Human Rights as obligatory on the issues of interpretation and application of the Convention and Protocols thereto in the events of supposed violation of the provisions of these contractual acts by the Russian Federation, when the alleged violation took place after their coming into operation in respect of the Russian Federation.

According to Article 32 of the Federal Law of 15th July, 1995 No. 101-FZ “On International Treaties of the Russian Federation”, the President of the Russian Federation and the Government of the Russian Federation take measures aimed at ensuring fulfilment of international treaties of the Russian Federation (Item 1); Federal bodies of executive power and authorized organizations, within whose competence fall issues regulated by international treaties of the Russian Federation, ensure fulfilment of the Russian Party’s obligations on treaties and exercise of the Russian Party’s rights following from these treaties, as well as observe fulfilment of their obligations by other parties of treaties (Item 2).

In accordance with the Civil Procedure Code of the Russian Federation a court must solve civil cases on the basis of the Constitution of the Russian Federation, international treaties of the Russian Federation, federal laws, other normative legal acts of bodies of state power and normative legal acts of bodies of local self-government (section 1 of Article 11); if an international treaty of the Russian Federation establishes rules, which differ from those stipulated by law, then the court when solving a civil case applies rules of the international treaty (Section 4 of Article 11); establishment by the European Court of Human Rights of violation of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms during resolution of a specific case by court, in connection with adoption of a decision on which a petitioner appealed to the European Court of Human Rights, in particular, belongs to the new circumstances, which are grounds for reconsideration of judicial decisions having entered into legal force (Item 4 of Section 4 of Article 392).

Similar provisions regarding application by courts, arbitration courts of rules of international treaties and on establishment by the European Court of Human Rights of violation of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms as a ground for reconsideration of respective judicial acts are fixed in Sections 1 and 4 of Article 13, Item 4 of Section 3 of Article 311 of the Arbitration Procedure Code of the Russian Federation, Sections 1 and 4 of Article 15, Item 4 of Section 1 of Article 350 of the Administrative Judicial Proceedings Code of the Russian Federation and Item 2 of Section 4 of Article 413 of the Criminal Procedure Code of the Russian Federation.

In the opinion of a group of deputies of the State Duma having petitioned the Constitutional Court of the Russian Federation in the procedure of Article 125 (Item “a” of Section 2) of the Constitution of the Russian Federation, the said legislative provisions do not conform to the Constitution of the Russian Federation, its Articles 15 (Sections 1, 2 and 4) and 79, so far as factually oblige Russia, its bodies of legislative, executive and judicial power to execute judgments of the European Court of Human Rights unconditionally even in the case when it contradicts the Constitution of the Russian Federation.

1.1. According to Section 1 of Article 85 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the request to the Constitutional Court of the Russian Federation to verify constitutionality of normative acts of bodies of state power, indicated in Article 125 (Item “a” of Section 2), is admissible if the petitioner deems them unenforceable due to unconstitutionality.

Sections 1 and 4 of Article 15 and Item 4 of Section 4 of Article 350 of the Administrative Judicial Proceedings Code of the Russian Federation contested in the request, as follows from Article 1 of the Federal Law of 8th March, 2015 No. 22-FZ “On Coming into Operation of the Administrative Judicial Procedure Code of the Russian Federation”, come into operation as from 15th September, 2015. At the same time, these legislative provisions are analogous to other provisions of the

procedural legislation in force, the constitutionality of which is challenged by the petitioners as well.

With the adduced circumstances in mind and taking into account that a group of deputies petitioned the Constitutional Court of the Russian Federation in the procedure of abstract normative control, i.e. out of connection with a specific case, the consideration of which has been completed in a court of general jurisdiction, an arbitration court, the present request in this part may be recognised as meeting the criterion of admissibility, as it is defined by Article 85 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”.

1.2. According to the legal position expressed by the Constitutional Court of the Russian Federation in the Ruling of 2nd July, 2013 No. 1055-O, the review of constitutionality of a Federal law on ratification of an international treaty, including the review of the procedure of adoption, as a general rule, may be carried out only prior to entry of this international treaty into force (which usually does not coincide with the moment of completion of the process of adoption of the respective Federal law on ratification of an international treaty); otherwise would not only contradict the universally recognised principle of international law *pacta sunt servanda* and would call in question observance by the Russian Federation of obligations which were voluntarily taken, including those following from the Vienna Convention on the Law of Treaties, but would also break the prescription of Article 125 (Item “d” of Section 2) of the Constitution of the Russian Federation and the provisions of Sub-Item “d” of Item 1 of Section 1 of Article 3 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation” concretising it, which authorise the Constitutional Court of the Russian Federation to decide cases on conformity to the Constitution of the Russian Federation only of international treaties of the Russian Federation having not entered into force.

As follows from the materials of the present case, the petitioners challenge neither any provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms as a multilateral international treaty of the Russian Federation nor the Federal Law “On Ratification of the Convention for the

Protection of Human Rights and Fundamental Freedoms and Protocols thereto” as a normative ground of its inclusion into the legal system of Russia in accordance with Article 15 (Section 4) of the Constitution of the Russian Federation.

At the same time the said Federal Law is in indissoluble normative unity with other provisions of procedural legislation and the Federal Law “On International Treaties of the Russian Federation” contested in the request, forming together with them a normative legal basis for execution of judgments of the European Court of Human Rights, passed in respect of Russia on the basis of the Convention for the Protection of Human Rights and Fundamental Freedoms in its interpretation by the European Court of Human Rights in a specific case.

Deputies of the State Duma connect the arisen, as they suppose, uncertainty of whether these legislative provisions are in conformity with the Constitution of the Russian Federation, with the unconditional obligatory character of judgments of the European Court of Human Rights passed in respect of Russia, fixed by them, in the events when collisions arise between interpretation of the Convention for the Protection of Human Rights and Fundamental Freedoms by the European Court of Human Rights contained in such judgment and the provisions of the Constitution of the Russian Federation.

1.3. Thus, proceeding from the requirements of Articles 74, 84 and 85 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the interconnected provisions of Article 1 of the Federal Law “On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols thereto”, Items 1 and 2 of Article 32 of the Federal Law “On International Treaties of the Russian Federation”, Sections 1 and 4 of Article 11, Item 4 of Section 4 of Article 392 of the Civil Procedure Code of the Russian Federation, Sections 1 and 4 of Article 13, Item 4 of Section 3 of Article 311 of the Arbitration Procedure Code of the Russian Federation, Sections 1 and 4 of Article 15, Item 4 of Section 1 of Article 350 of the Administrative Judicial Proceedings Code of the Russian Federation and Item 2 of Section 4 of Article 413 of the Criminal Procedure Code of the Russian Federation are the

subject-matter of consideration by the Constitutional Court of the Russian Federation in the present case to the extent to which on their basis a judgment of the European Court of Human Rights, passed on a complaint against Russia and placing obligations on the state, which do not conform to the Constitution of the Russian Federation, is subject to execution. 2. According to the Constitution of the Russian Federation, everyone has the right in accordance with international treaties of the Russian Federation to appeal to interstate bodies for the protection of human rights and freedoms if all available internal means of legal protection have been exhausted (Article 46, Section 3). This provision of the Constitution of the Russian Federation correlate to prescriptions of its Article 15 (Section 4), stipulating that international treaties of the Russian Federation are an integral part of its legal system, and Article 79, by virtue of which the Russian Federation may participate in international associations and transfer some of its powers to those associations in accordance with international treaties provided that this does not entail restrictions on human and civil rights and freedoms and does not conflict with the basic principles of the constitutional order of the Russian Federation.

In order to realise the adduced constitutional provisions the Russian Federation ratified the Convention for the Protection of Human Rights and Fundamental Freedoms and thereby recognised it as an integral part of its legal system, and recognised the jurisdiction of the European Court of Human Rights, by virtue of Article 46 of the Convention, *ipso facto* and without special agreement as obligatory on the issues of interpretation and application of the provisions of the Convention and Protocols thereto in the events of supposed violation of them by the Russian Federation (according to Item 1 of this Article of the Convention in the wording of the Protocol of 13th May, 2004 No. 14 the High Contracting Parties undertake to execute final judgments of the Court on cases in which they are parties).

2.1. Within the meaning of Articles 1 (Section 1), 2, 15 (Section 2), 17 (Section 2), 18, 45 (Section 1), 46 (Sections 1 and 2), 52, 53, 55 and 118 of the Constitution of the Russian Federation, protection of human and civil rights and

freedoms, guaranteed to everyone, being obligation of the state, including judicial protection the right to which belongs to basic inalienable human rights and freedoms and at the same time coming out as a guarantee of all other rights and freedoms, cannot be recognised effective if a court decision or an act of another authorised body, passed with the aim to restore violated rights, is not executed in due time. Proceeding from this, as the Constitutional Court of the Russian Federation has indicated, a final judgment of the European Court of Human Rights, adopted on the outcome of consideration of the complaint of a person who claimed to be a victim of violation by the Russian Federation of his rights, recognised by the Convention for the Protection of Human Rights and Fundamental Freedoms or Protocols thereto, in the part ascertaining respective violation with regard to this person and awarding him if needed just compensation, is subject to execution (Judgment of 6th December, 2013 No. 27-P).

Accordingly, since the judgment of the European Court of Human Rights contemplates that the state-defendant would take concrete measures for its execution, the person in respect of whom the violation of the Convention for the Protection of Human Rights and Fundamental Freedoms was established, must in any event have opportunity to appeal to a competent court of the Russian Federation with application to reconsider a judicial act, which was a reason for petitioning to the European Court of Human Rights, and be sure that his application will be considered; in its turn, the decision of a competent Russian court on the question of the possibility to reconsider a respective judicial act, taking into account the need to adopt concrete measures of individual nature in order to restore violated rights of the applicant, must be based on thorough and full consideration of his arguments as well as circumstances of a specific case (Judgments of the Constitutional Court of the Russian Federation of 26th February, 2010 No. 4-P and of 6th December, 2013 No. 27-P).

As to the position of the European Court of Human Rights itself with regard to execution of its judgments, it supposes that concrete means, helping to execute legal obligation imposed on the state-defendant in accordance with Article 46 of the

Convention for the Protection of Human Rights and Fundamental Freedoms are chosen within the framework of the national legal system, as a general rule, by the state-defendant itself providing that these means will be compatible with the conclusions contained in the respective judgment of the European Court of Human Rights; the questions of interpretation and application of national legislation must be solved by national state bodies, namely the judicial ones; such discretion with regard to the method of execution of judgments of the European Court of Human Rights reflects the freedom of choice, characteristic of the fundamental obligation of states-parties following from Article 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms to ensure rights and freedoms determined there (judgments of 13th July, 2000 on the case “*Scozzari & Giunta v. Italy*”, of 30th June, 2005 on the case “*Jahn and others v. Germany*”, of 29th March, 2006 on the case “*Scordino v. Italy*”, of 3rd July, 2008 on the case “*Musayeva v. Russia*”, of 3rd July, 2008 on the case “*Ruslan Umarov v. Russia*” and others).

According to Article 35 of the Convention for the Protection of Human Rights and Fundamental Freedoms, the European Court of Human Rights may deal with the matter only when all domestic remedies have been exhausted. Thereby, the protection of rights and freedoms, set in Section I of the Convention, is carried out by the European Court of Human Rights on the basis of the subsidiarity principle, which, as the European Court of Human Rights itself noted more than once, raises the obligation of states, having ratified the Convention, to guarantee everyone the protection of rights recognised by it, primarily in their own legal order and with regard to bodies of national judicial system (judgments of 29th March, 2006 on the case *Mostacciolo v. Italy (No. 2)*” and of 2nd November, 2010 on the case “*Sakhnovsky v. Russia*”).

By virtue of Articles 46 (Sections 1 and 3), 120 (Section 1), 125 and 126 of the Constitution of the Russian Federation such, a role of the European Court of Human Rights in the Russian Federation which is, in essence, additional to the national mechanism of judicial protection of human rights, is predetermined by the need to carry out judicial protection primarily by all courts of the Russian

Federation, including the Supreme Court of the Russian Federation (which is the highest judicial body for civil cases, settlement of economic disputes, criminal, administrative cases; among other things, it carries out protection of rights and freedoms of citizens, by way of consideration of cassation and supervisory complaints against judicial acts having entered into legal force), as well as the Constitutional Court of the Russian Federation (which as the highest judicial body of constitutional control reviews cases on complaints of citizens on violation of constitutional rights and freedoms by a law applied by national courts in a specific case).

2.2. Since the Convention for the Protection of Human Rights and Fundamental Freedoms as an international treaty of the Russian Federation is an integral part of its legal system, the state is obliged to execute a judgment of the European Court of Human Rights, passed on the basis of the provisions of the Convention, on complaint against Russia in respect of persons participating in the case and within the framework of a specific subject-matter of a dispute. Wherein the realisation of measure both of individual and general character, envisaged by the judgment of the European Court of Human Rights must be carried out in accordance with Article 15 (Section 4) of the Constitution of the Russian Federation also on the basis of recognition of such judgment as an integral part of the Russian legal system.

At the same time, as follows from the Constitution of the Russian Federation, its Articles 4 (Section 1), 15 (Section 1) and 79 enshrining Russia's sovereignty, supremacy and the highest legal force of the Constitution of the Russian Federation, and inadmissibility of implementation into the legal system of the state of international treaties, participation in which can entail restrictions of human and civil rights and freedoms or allow any infringements to the constitutional system of the Russian Federation and thereby break constitutional prescriptions, neither the Convention for the Protection of Human Rights and Fundamental Freedoms as international treaty of the Russian Federation nor legal positions of the European Court of Human Rights based on the Convention containing appraisals of national

legislation or concerning the need to alter its provisions, do not abrogate for the Russia's legal system the priority of the Constitution of the Russian Federation and therefore are subject to execution within the framework of this system only with the condition of recognition of supreme legal force exactly of the Constitution of the Russian Federation.

As a democratic law-governed state, Russia as a member of the world community, where universally recognised principles and norms of international law operates, concludes international treaties and participates in inter-state associations, transferring some of its powers to them (Preamble; Article 1, Section 1; Article 15, Section 4; Article 17, Section 1; Article 79 of the Constitution of the Russian Federation), which, however, does not mean its renunciation of state sovereignty, belonging to the foundation of the constitutional system and contemplating supremacy, independence and self-sufficiency of the state power, fullness of legislative, executive and judicial powers of the state on its entire territory and independence in international relations, and also being a necessary qualitative sign of the Russian Federation, characterising its constitutional-law status (Judgment of the Constitutional Court of the Russian Federation of 7th June, 2000 No. 10-P).

Proceeding from this in a situation when the content of a judgment of the European Court of Human Rights, including the part of prescriptions addressed to the respondent state and based on the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms, interpreted by the European Court of Human Rights within the framework of a specific case, unlawfully, from the constitutional-law point of view, affect principles and norms of the Constitution of the Russian Federation, Russia may, as an exception, deviate from fulfilment of obligations imposed on it, when such deviation is the only possible way to avoid violation of fundamental principles and norms of the Constitution of the Russian Federation.

3. When resolving constitutional-law collisions that may arise in connection with interpretation of the Convention for the Protection of Human Rights and Fundamental Freedoms as international treaty of the Russian Federation, the Vienna

Convention on the Law of Treaties, to which Russia is a party, must be taken into account.

Stating in Article 26 the fundamental principle of international law *pacta sunt servanda* (every treaty in force is binding upon the parties to it and must be performed by them in good faith), the Vienna Convention also establishes the general rule of interpretation of treaties, stipulating that a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose (Item 1 of Article 31).

Thus, an international treaty is binding for its participants in the meaning which can be elucidated with the help of the adduced rule of interpretation. From this point of view, if the European Court of Human Rights, interpreting a provision of the Convention for the Protection of Human Rights and Fundamental Freedoms in the course of the consideration of a case, gives to a notion used in the Convention a meaning other than the ordinary one or carries out interpretation contrary to the object and purpose of the Convention, the state, in respect of which the judgment has been passed on this case, has the right to refuse to execute it as it goes beyond the obligations, voluntarily taken by this state upon itself when ratifying the Convention. Accordingly, the judgment of the European Court of Human Rights cannot be regarded obligatory for execution, if as a result of interpretation of a specific provision of the Convention for the Protection of Human Rights and Fundamental Freedoms on which this judgment is based, it was carried out in violation of the general rule of interpretation of treaties, the meaning of this provision will diverge from imperative norms of customary international law (*jus cogens*), to which without doubts the principle of sovereign equality and respect for rights inherent in sovereignty and the principle of non-interference with internal affairs of states belong.

Besides, as follows from Item 1 of Article 46 of the Vienna Convention, a state may block operation of separate provisions of an international treaty in its respect, referring to the fact that the consent to obligatory character of this treaty for

it was expressed by it in violation of one or another provision of its internal law with regard to the competence to conclude treaties, if this violation was obvious and concerned a norm of internal law of a particular importance. In the Russian Federation -primarily the provisions of Chapters 1 and 2 of the Constitution of the Russian Federation, whose alteration by means of constitutional amendments is not allowed and may be carried out exclusively by way of adoption of a new Constitution of the Russian Federation belongs to the number of such norms.

Since Russia, within the meaning of Articles 15 (Sections 1 and 4), 79 and 125 (Section 6) of the Constitution of the Russian Federation, has no right to conclude international treaties contradicting the Constitution of the Russian Federation, and the rules of an international treaty if they violate constitutional provisions, which undoubtedly have particular importance for Russia, may not and must not be implemented in its legal system, based on the supremacy of the Constitution of the Russian Federation, it is the obligation of bodies of state power, when implementing international treaties, which contemplates correlation of the legislation of the Russian Federation with its obligations under international treaties, to recognise, observe, and protect human and civil rights and freedoms as they are defined by the Constitution of the Russian Federation, and to prevent violations of the constitutional system foundations.

It is not excluded, however, that an international treaty, which at the moment of accession of the Russian Federation to it both from its literal meaning and the meaning attributed to it in the course of application by an interstate body, authorised to do it by the international treaty itself, was in conformity with the Constitution of the Russian Federation, subsequently by means of interpretation alone (particularly at sufficiently high degree of abstract character of its norms, inherent, in particular, in the Convention for the Protection of Human Rights and Fundamental Freedoms) was rendered concrete in its content in the way that entered into contradiction with the provisions of the Constitution of the Russian Federation, first and foremost related to human and civil rights and freedoms as

well as the foundations of the constitutional system, including state sovereignty and supreme legal force of the Constitution of the Russian Federation.

In its turn, unconditional execution by Russia of the decisions of an inter-state body, adopted on the basis of such international treaty in the interpretation not conforming to the Constitution of the Russian Federation, could entail violation of its provisions which in this case (bearing in mind the presumption of knowledge of the content of acting constitutions of states – parties to the international treaty by bodies, specially authorised by an international treaty to consider issues related to the protection of rights and freedoms of citizens,) is, undoubtedly, manifest, i.e. objectively evident to any subject of international law conducting itself in the matter in accordance with normal practice and in good faith (Item 2 of Article 46 of the Vienna Convention on the Law of Treaties).

At the same time, since expression by the Russian Federation of the consent to obligatory character of an international treaty in violation of one or another provision of the Constitution of the Russian Federation can be revealed only after the adoption by the authorised inter-state body of a decision interpreting a specific norm of this international treaty in the sense leading to a conflict with a respective provision of the Constitution of the Russian Federation, the issue in such cases is not validity or invalidity of an international treaty for Russia as a whole, but it is only impossibility to fulfil obligation to apply its norm in the interpretation, attributed to it by an authorised inter-state body within the framework of consideration of a specific case.

Within the context of the adduced provisions of the Vienna Convention on the Law of Treaties this means that a decision of an authorised inter-state body, including a judgment of the European Court of Human Rights, cannot be executed by the Russian Federation with regard to measures of individual and general character imposed on it, if interpretation of the norm of an international treaty, which this decision is based on, violates respective provisions of the Constitution of the Russian Federation.

4. Russia joined the Convention for the Protection of Human Rights and Fundamental Freedoms striving for provision of realisation of a fundamental provision concerning human rights and freedoms as the supreme value in the law-governed state, stated in Article 2 of the Constitution of the Russian Federation, with additional guarantees. Due to the fact that participation of Russia in this Convention, the observance of which the European Court of Human Rights is called upon to ensure, is determined by the task of realisation of this very constitutional provision, harmonisation of Russian law with the conventional one, interpretation and application of which is carried out by the European Court of Human Rights in the course of consideration of specific cases, is admissible inasmuch as it does not engender contradictions with the Constitution of the Russian Federation.

Bound by the requirement to observe an international treaty having entered into force, such as the Convention for the Protection of Human Rights and Fundamental Freedoms, the Russian Federation is nevertheless obliged to ensure the supremacy of the Constitution of the Russian Federation within the framework of its legal system, which forces it in the event of emerging of any collisions in this field, whereas the Constitution of the Russian Federation and the Convention for the Protection of Human Rights and Fundamental Freedoms are based on the same basic values of the protection of human and civil rights and freedoms, to give preference to the requirements of the Constitution of the Russian Federation and thereby not follow literally the judgment of the European Court of Human Rights in the event if its execution contradicts constitutional values.

Accordingly, the Constitutional Court of the Russian Federation cannot support interpretation of the Convention for the Protection of Human Rights and Fundamental Freedoms given by the European Court of Human Rights if it is the Constitution of the Russian Federation (including its interpretation by the Constitutional Court of the Russian Federation) as a legal act having supreme legal force in the legal system of Russia, more complete, if to compare with respective provisions of the Convention in their interpretation by the European Court of Human Rights ensures protection of human and civil rights and freedoms, including

in the balance with rights and freedoms of other people (Article 17, Section 3, of the Constitution of the Russian Federation).

Deviation from judgments of the European Court of Human Rights, interpreting and applying the Convention for the Protection of Human Rights and Fundamental Freedoms, takes place also in the practice of European states, although in exceptional cases as well and in the presence of sufficiently weighty reasons, including when revealing conventional-constitutional collisions, which, as a rule, concern not that much the main content (the essence) of these or that human rights and freedoms as such (which are formulated in the Convention in a very abstract way), as their concretising by means of interpretation by judgments of the European Court of Human Rights, containing, in their turn, appraisal of interpretation and realisation of these rights as well as rights comparable with them by content, fixed by constitutions of states-parties to the Convention, carried out on the national level.

From this perspective the most emblematic is the practice of the Federal Constitutional Court of the Federal Republic of Germany, which refers to the legal position as to “limited legal force of judgments of the European Court of Human Rights”, designed by it in the Judgments of 11th October, 1985, of 14th October, 2004 and of 13th July, 2010. In particular, while deciding over the notion of execution of the Judgment of the European Court of Human Rights of 26th February, 2004 in the case “*Görgulu v. Germany*” it formulated the principle of priority of the national constitution over the decisions of the European Court of Human Rights for the purposes of national law-enforcement in the following way: the Convention for the Protection of Human Rights and Fundamental Freedoms has the status of a federal law in the internal legal order and in addition to the practice of the European Court of Human Rights serves just as a guiding line for interpretation during determination of the content and field of operation of basic rights and principles of the Basic Law of the FRG and only on the ground that this does not lead to restriction or derogation of basic rights of citizens, protected by the Basic Law of the FRG; the decisions of the European Court of Human Rights are

not always obligatory for execution by the FRG courts, but they must not remain fully without attention; national justice must take these decisions into account in a proper way and carefully adapt them to the internal legislation. At the same time, as the Federal Constitutional Court of the FRG supposes, the means to achieve accord with the European Court of Human Rights is to avoid conflicts between internal and international law at the initial stage of consideration of a case in a national court, which, in principle, must be reduced to the minimum so far as both courts use the same methodology (Judgment of 14th October, 2004 on the case 2BvR 1481/04 (BVerfGE 111, 307). Similar attitude was expressed by it earlier, with regard to the decisions of the European Court of Justice (Decision of 29th May, 1974 on the case 2 BvL 52/71 (BVerfGE 37, 271) [*“Solange-I”*]).

A similar approach was used by the Constitutional Court of the Republic of Italy, having disagreed with the conclusions of the European Court of Human Rights with regard to trans-border pension payments, which were formulated in the Judgment of 31st May, 2011 on the case *“Maggio and others v. Italy”*. In particular, in the Judgment of 19th November, 2012 on the case No. 264/2012 it noted that observance of international obligations may not be the reason of reduction of the level of protection of rights which has already been imbedded in internal legal order but, on the contrary, may and must be an effective instrument of widening this protection; as a consequence, the conflict between the protection provided for by the Convention for the Protection of Human Rights and Fundamental Freedoms and constitutional protection of basic rights must be solved in the way of maximum extension of guarantees and on the ground of ensuring appropriate balance with other interests protected by the constitution, i.e. with other constitutional norms guaranteeing basic rights, which widening of an individual guarantee could have influenced on. The Judgment of the Constitutional Court of the Republic of Italy of 22nd October, 2014 No. 238/2014 regarding the Judgment of the International Court of Justice on the case on *Jurisdictional Immunities of the State* (Germany v. Italy: Greece Intervening), I.C.J. Reports 2012) also speaks about the priority of constitutional norms: the decision of an international judicial body in the event of

conflict with basic constitutional principles of Italian law makes impossible any perception of it in the context of Article 10 of the Constitution of the Republic of Italy, which in ordinary conditions envisages automatic reception of international law into the national system.

The Constitutional Court of the Republic of Austria, recognising the significance of the Convention for the Protection of Human Rights and Fundamental Freedoms and judgments of the European Court of Human Rights based on it, also came to the conclusion on impossibility of application conventional provisions in the interpretation of the European Court of Human Rights, contradicting the norms of the national constitutional law (Judgment of 14th October, 1987 on the case No. B267/86).

The Supreme Court of the United Kingdom of Great Britain and Northern Ireland in the decision of 16th October, 2013 ([2013] UKSC 63) noted inadmissibility for the British legal system of the conclusions and interpretation of the Convention for the Protection of Human Rights and Fundamental Freedoms in the Judgment of the European Court of Human Rights of 6th October, 2005 on the case “*Hirst v. the United Kingdom (No. 2)*” with regard to voting rights of prisoners. According to its legal position, the decisions of the European Court of Human Rights in principle are not perceived as subject to unconditional application; as a general rule, they are only “taken into consideration”; it is deemed possible to follow these decisions only in the event if they do not contradict fundamental material and procedural norms of the national law.

In all the adduced cases of conventional-constitutional collisions the issue is not of contradictions between the Convention for the Protection of Human Rights and Fundamental Freedoms and national constitutions as such, but of the collision of the interpretation of a conventional provision, given by the European Court of Human Rights in a judgment on a specific case, and the provisions of national constitutions, including in their interpretation by constitutional courts (or other highest courts invested with analogous powers). Appraising norms of internal legislation on conformity to constitutions of their states, these national judicial

bodies, when passing a decision, proceed from the interpretation, taking into account the balance of constitutionally protected values and international-law regulation of personal status, that better protects human and civil rights in the legal system of this state, bearing in mind not only those having directly appealed for protection, but all those whose rights and freedoms may be affected.

Although interpretational law-applying practice of the European Court of Human Rights itself on one or another issue, accumulated for a relatively long period, may change in course of time, its judgments, nevertheless, as it seems, must provide higher, if to compare with national regulation, level of protection of human and civil rights and freedoms. However, poly-semantic character of such supposition reveals itself in the case “*Konstantin Markin v. Russia*”, with regard to which the conflict of interpretations arose in 2010 between the Constitutional Court of the Russian Federation and the European Court of Human Rights in the question of whether there is gender-based discrimination when male military servicemen are deprived of the possibility to receive three-years parental leave which is granted to military servicewomen.

In this case, as in other cases concerning the problem of positive discrimination, violation of Article 14 “Prohibition of Discrimination” of the Convention for the Protection of Human Rights and Fundamental Freedoms is connected, as the European Court of Human Rights supposes, with granting certain advantages exclusively on objective feature, not determined by individual peculiarities of a person, for example such as gender. Moreover, in the interpretation of the European Court of Human Rights discrimination (and in the case under consideration, this is violation of Article 14 of the Convention) is absent also in the event of “negative equality” – when the legislator refuses to grant the right to parental leave to all persons, falling under the category of military personnel, which, however, would mean reduction of the level of protection, which is guaranteed in today Russia, including bearing in mind particular (linked to maternity) social role of women in society, of a fairly large category of military servicewomen. And in the opinion of the Constitutional Court of the Russian

Federation, absence of discrimination is possible at equality of subjects, belonging to one category, in this case –military servicewomen, i.e. if specificity of military service and the need to ensure defence capacity of the country and security of the state hinders granting of the disputed right to all military servicemen, its granting to all military servicewomen in the balance of constitutional values is permissible.

A striking example of the most evident divergence with the provisions of the Constitution of the Russian Federation is the Judgment of the European Court of Human Rights of 4th July, 2013 on the case “*Anchugov and Gladkov v. Russia*”, in which the presence in Russian legislation of the restriction of voting rights of persons convicted under court sentence was recognised as violation of Article 3 “Right to Free Elections” of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, which directly contradicts Article 32 (Section 3) of the Constitution of the Russian Federation, according to which citizens kept in places of deprivation of liberty under court sentence have no right to elect and to be elected. A consent of the Russian Federation on execution of such a judgment would mean violation of Articles 15 (Section 1), 32 (Section 3) and 79 of the Constitution of the Russian Federation or – by virtue of its Article 135 – the need to adopt a new Constitution of the Russian Federation, whereas accession to the Convention for the Protection of Human Rights and Fundamental Freedoms and Russia’s participation in it as a democratic law-governed state in which a human being, his rights and freedoms are supreme value, is determined by the very adoption, observance and operation of the Constitution of the Russian Federation.

5. The provisions of Article 1 of the Federal Law “On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols thereto”, Items 1 and 2 of Article 32 of the Federal Law “On International Treaties of the Russian Federation”, Sections 1 and 4 of Article 11, Item 4 of Section 4 of Article 392 of the Civil Procedure Code of the Russian Federation, Sections 1 and 4 of Article 13, Item 4 of Section 3 of Article 311 of the Arbitration Procedure Code of the Russian Federation, Sections 1 and 4 of Article 15, Item 4 of Section 1 of Article 350 of the Administrative Judicial Proceedings Code of the

Russian Federation and Item 2 of Section 4 of Article 413 of the Criminal Procedure Code of the Russian Federation have been adopted in order of concretisation of Articles 15 (Section 4), 17 (Section 1), 46 (Section 3) and 79 of the Constitution of the Russian Federation.

In the context of constitutionally protected values these legislative provisions in their normative unity, being an important legal guarantee of implementation of the Convention for the Protection of Human Rights and Fundamental Freedoms into the legal system of the Russian Federation, are simultaneously intended to ensure coordinated procedural law order of execution of judgments of the European Court of Human Rights, passed in its respect and based on the interpretation and application of the Conventional provisions.

5.1. The questions arising in connection with execution of judgments of the European Court of Human Rights have already been the subject-matter of consideration by the Constitutional Court of the Russian Federation.

In the Judgment of 26th February, 2010 No. 4-P the Constitutional Court of the Russian Federation came to the following conclusions: the presence in the legal system of a state of the procedures of reconsideration of judicial decisions having entered into legal force, in connection with passing of which were ascertained violations of the Convention for the Protection of Human Rights and Fundamental Freedoms, comes out as a measure, obligatory character of realisation of which in order to implement the prescriptions of this Convention follows from its Article 46 in interconnection with Articles 19, 46 and 118 of the Constitution of the Russian Federation, and, consequently, requires legislative fixation of the mechanism of execution of final judgments of the European Court of Human Rights, allowing to ensure adequate restoration of rights, violation of which has been revealed by the European Court of Human Rights; accordingly, the Federal legislator is obliged to guarantee the possibility of reconsideration of judicial decisions having entered into legal force in the events of establishment of violation of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms by the European Court of Human Rights in the course of consideration by a court of

general jurisdiction of a specific case, in connection with adoption of the decision on which the applicant petitioned the European Court of Human Rights.

By the Judgment of 6th December, 2013 No. 27-P the Constitutional Court of the Russian Federation recognised Item 4 of Section 4 of Article 392 of the Civil Procedure Code of the Russian Federation in the interconnection with Sections 1 and 4 of its Article 11 as not contradicting to the Constitution of the Russian Federation. Revealing the constitutional-law meaning of these legislative provisions in the system of acting legal regulation, it referred to the conclusions formulated earlier in the Judgment of 26th February, 2010 No. 4-P and on the following legal positions:

in the course of the proceedings of reconsideration of a judicial decision having entered into legal force in the procedure of Article 4 of Section 4 of Article 392 of the Civil Procedure Code of the Russian Federation a court of general jurisdiction, obliged to obey only the Constitution of the Russian Federation and Federal law (Article 120, Section 1, of the Constitution of the Russian Federation) and to decide civil cases on the basis of the Constitution of the Russian Federation, international treaties of the Russian Federation and the legislation of the Russian Federation (Section 1 of Article 11 of the Civil Procedure Code of the Russian Federation), may come to the conclusion on impossibility to execute a judgment of the European Court of Human Rights without refusal to apply the provisions of the legislation of the Russian Federation, earlier recognised by the Constitutional Court of the Russian Federation as not violating constitutional rights of the petitioner in his specific case. In such case the question arises before the court of general jurisdiction about constitutionality of the said legislative provisions, having entailed violation of respective provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms in their interpretation by the European Court of Human Rights;

revealing of unconstitutional legislative provisions and their exclusion from the list of operating legal norms may only be the combined result of interaction of courts of different kinds of jurisdiction with delimitation of their competence in

mind, contemplating, on the one hand, realisation by court of general jurisdiction of the competence to put the question of constitutionality of respective norms before the Constitutional Court of the Russian Federation, and on the other – the obligation of the Constitutional Court of the Russian Federation to resolve this question finally. In this connection, Item 4 of Section 4 of Article 392 of the Civil Procedure Code of the Russian Federation in the interconnection with Sections 1 and 4 of its Article 11 may not be regarded as hindering a court of general jurisdiction, carrying out proceedings of reconsideration of a judicial decision having entered into legal force on application of the person, in respect of whom the European Court of Human Rights ascertained violation of the Convention for the Protection of Human Rights and Fundamental Freedoms determined by the application in his case of the provisions of the legislation of the Russian Federation, to suspend the proceeding and petition the Constitutional Court of the Russian Federation with a request to review their conformity to the Constitution of the Russian Federation. Passing in such cases a decision by the court of general jurisdiction on the outcome of consideration of application on reconsideration of a judicial decision having entered into legal force in the procedure of Item 4 of Section 4 of Article 392 of the Civil Procedure Code of the Russian Federation without preliminary petitioning the Constitutional Court of the Russian Federation would mean that in the practice of courts of general jurisdiction it is admitted the possibility of different appraisal of constitutionality of the same legislative provisions and thereby – in violation of the requirements of the Constitution of the Russian Federation, including its Articles 3, 4, 15 and 76, –the supremacy of the Constitution of the Russian Federation is challenged, having in the legal system of the Russian Federation the supreme legal force with regard to any legal acts operating in the territory of the Russian Federation.

The adduced legal positions of the Constitutional Court of the Russian Federation, formulated in reference to the order of reconsideration on the newly discovered or new facts of judicial decisions having entered into legal force within

the framework of civil judicial proceedings have universal character and, therefore, fully extend to other kinds of judicial proceedings.

5.2. Realising the Judgment of the Constitutional Court of the Russian Federation of 6th December, 2013 No. 27-P, the Federal Constitutional Law of 4th June, 2014 No. 9-FKZ supplemented Article 101 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation” with Section 2, according to which a court when reconsidering, in a situation defined by procedural legislation, a case in connection with passing of a decision by an international body for the protection of human rights and freedoms, in which violation in the Russian Federation of human rights and freedoms is ascertained when applying a law or its individual provisions, having come to the conclusion that an issue of the possibility of application of a respective law can be resolved only after confirmation of its conformity to the Constitution of the Russian Federation, petitions to the Constitutional Court of the Russian Federation with a request to review constitutionality of this law.

The said legislative provision and the provisions of Item 4 of Section 4 of Article 392 of the Civil Procedure Code of the Russian Federation, Item 4 of Section 3 of Article 11 of the Arbitration Procedure Code of the Russian Federation, Item 4 of Section 1 of Article 350 of the Administrative Judicial Proceedings Code of the Russian Federation and Item 2 of Section 4 of Article 413 of the Criminal Procedure Code of the Russian Federation, being in the systematic unity with it, are, therefore, a legal means of ensuring the supremacy and the supreme legal force of the Constitution of the Russian Federation at resolving of possible collisions between the interpretation of the Convention for the Protection of Human Rights and Fundamental Freedoms by the European Court of Human Rights, contained in a judgment of the European Court of Human Rights, and the provisions of the Constitution of the Russian Federation. Herewith, the indicated legislative provisions, within their constitutional-law meaning in the context of the legal positions of the Constitutional Court of the Russian Federation expressed in the present Judgment, in any case oblige a court of general jurisdiction, an

arbitration court, carrying out proceedings of reconsideration of a judicial act having entered into legal force on application of a person, on whose complaint the European Court of Human Rights passed a judgment, ascertaining violation of the Convention for the Protection of Human Rights and Fundamental Freedoms by the provisions of the legislation of the Russian Federation, applied in this person's case, to suspend proceedings and petition the Constitutional Court of the Russian Federation with a request to review their conformity to the Constitution of the Russian Federation.

5.3. If a judgment of the European Court of Human Rights, passed on a complaint against Russia, is based on the interpretation of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms leading to their conflict with the Constitution of the Russian Federation, such judgment, within the meaning of Articles 4 (Section 2), 15 (Sections 1 and 4), 16 (Section 2) and 79 of the Constitution of the Russian Federation, cannot be executed. Accordingly, if bodies of state power of the Russian Federation, whose competence comprises ensuring of application of the Convention as an international treaty of the Russian Federation, come to the conclusion that such conflict takes place and that actions and decisions, required for execution of the judgment of the European Court of Human Rights, may lead to violation of the provisions of the Constitution of the Russian Federation, the question arises regarding the real meaning of these provisions in the context of the emerged conflict and international obligations of Russia.

This question, as follows from Articles 118 (Section 2) and 125 of the Constitution of the Russian Federation in the interconnection with its Articles 15 (Sections 1 and 4) and 79, by its legal nature is subject to resolution in the procedure of constitutional judicial proceedings. Within the meaning of the operating legal regulation, this is possible by means of interpretation of respective provisions of the Constitution of the Russian Federation, carried out by the Constitutional Court of the Russian Federation by an official request of the authorised subjects with the aim to eliminate uncertainty in understanding of these

provisions with regard to the possibility of execution of a judgment of the European Court of Human Rights and taking measures of individual and general character aimed at ensuring the fulfilment of the Convention for the Protection of Human Rights and Fundamental Freedoms (Article 125, Section 5, of the Constitution of the Russian Federation; Chapter XIV of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”).

Moreover, as an instrument of ensuring the supremacy and the supreme legal force of the Constitution of the Russian Federation such interpretation may be applied also in case when execution (with regard to taking measures of individual and common character) of a judgment of the European Court of Human Rights, passed on a complaint against Russia, is carried out (may be carried out) without participation of courts.

6. Issues related to the European system of human rights protection and the role of the European Court of Human Rights as its control mechanism are also actively discussed on the highest international level. Participants of such discussions, including those having taken place on conferences in Interlaken (2010), Izmir (2011) and Brighton (2012), express mutually exclusive opinions, from statements on inadmissibility of any infringements on the spirit and letter of the Convention for the Protection of Human Rights and Fundamental Freedoms and powers of the European Court of Human Rights to the strongly-worded criticism of these institutions as obsolete and at the moment having lost legal and social legitimacy, especially as it is considered that many topical and acute problems primordially, during conclusion of the Convention and institution of the European Court of Human Rights, did not at all fall within its jurisdiction.

The suggestion of the conference in Brighton to include in the Preamble of the Convention for the Protection of Human Rights and Fundamental Freedoms mentions of “the principle of subsidiarity” (*principe de subsidiarité*) and “the doctrine of margin of appreciation” (*marge d’appréciation*) and submission by the Committee of Ministers of the Council of Europe for consideration by states-parties of respective amendments in the form of Protocol No. 15 to the Convention, which

is open for signing as from 24th June, 2013 may be ascribed to the most noticeable results of these discussions. With the said amendments in mind, readiness for cooperation built on the understanding and acceptance by one party of certain, appropriate, only within the framework of common basic principles, reservations as to the issues, on which other party is not ready to yield can become the constructive method of getting over legal conflicts between sovereign states – members of the Council of Europe.

However, interaction of the European and constitutional legal orders is impossible in the conditions of subordination, so far as only dialogue between different legal systems is the basis of their appropriate balance. This is the approach, which the European Court of Human Rights is intended to adhere to in its activity as the interstate subsidiary judicial body, and this is its respect for national constitutional identity of the states – parties to the Convention for the Protection of Human Rights and Fundamental Freedoms that effectiveness of its norms in the intra-state legal order in many respects depends on. Particular attention of super-national bodies to basic elements of this constitutional identity, which constitute intra-state norms on fundamental rights as well as norms on the basis of the constitutional system guaranteeing these norms, will allow to reduce the probability of conflict between national and super-national law, which, in its turn, in many respects will determine, with preservation of constitutional sovereignty of states, effectiveness of the entire European system of the protection of human and civil rights and freedoms and further harmonisation of the European legal space in this field.

In the Russian Federation resolution of this kind of conflicts is entrusted, by virtue of the Constitution of the Russian Federation, to the Constitutional Court of the Russian Federation, which in the extremely rare cases deems it appropriate to use “the right to objection” for the sake of making its contribution (following colleagues from Austria, Great Britain, Germany and Italy) to the formation of balanced practice of the European Court of Human Rights, but not for the sake of self-isolation from its decisions, which reflects consensus worked out by states-

parties to the Convention, but proceeding from the need of constructive interaction and mutually respectful dialogue with it. In such a context the Judgment of the Constitutional Court of the Russian Federation of 6th December, 2013 No. 27-P as well as the present Judgment should be regarded as aspiration to avoid serious complications in the relations of Russia not only with the European Court of Human Rights, but also with the Council of Europe in the situation when a judgment of the European Court of Human Rights contemplates making amendments to Russian legislation, fraught with violation of human and civil rights and freedoms fixed by the Constitution of the Russian Federation, much more considerable than the one which the European Court of Human Rights objected against.

If the Constitution of the Russian Federation does not allow to agree with an individual judgment of the European Court on Human Rights, the Constitutional Court of the Russian Federation is obliged to reflect this disagreement in its decision. At the same time, recognising fundamental significance of the European system of the protection of human and civil rights and freedoms, which a judgment of the European Court of Human Rights forms part of, the Constitutional Court of the Russian Federation is ready to look for lawful compromise for the sake of maintenance of this system, but it preserves for itself the determination of its readiness, so far as the limits of compromise in this issue are outlined by the Constitution of the Russian Federation.

Evidence of such, based on the Constitution of the Russian Federation, approach of the Constitutional Court of the Russian Federation is consistent implementation by it of the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms and decisions of the European Court of Human Rights in the Russian legal system. What is more, the Constitutional Court of the Russian Federation recognises the significance of its activity on revelation of the drawbacks of national legal regulation and on suggestion of the ways to eliminate them. At the same time, problems connected with deviation from the subsidiarity principle, which exist in the practice of the European Court of Human

Rights, create, in the opinion of the Constitutional Court of the Russian Federation, the risk of situations in which orientation towards sufficiently abstract norms of the Convention can lead to ignoring of the will of constitutional legislator in the interstate legal construction, contemplating no transfer to it of such element of state sovereignty.

Proceeding from the expounded above and guided by Articles 71, 72, 74, 75, 78, 79 and 87 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation, the Constitutional Court of the Russian Federation

h e l d:

1. To recognise the interconnected provisions of Article 1 of the Federal Law “On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols thereto”, Items 1 and 2 of Article 32 of the Federal Law “On International Treaties of the Russian Federation”, Sections 1 and 4 of Article 11, Item 4 of Section 4 of Article 392 of the Civil Procedure Code of the Russian Federation, Sections 1 and 4 of Article 13, Item 4 of Section 3 of Article 311 of the Arbitration Procedure Code of the Russian Federation, Sections 1 and 4 of Article 15, Item 4 of Section 1 of Article 350 of the Administrative Judicial Proceedings Code of the Russian Federation and Item 2 of Section 4 of Article 413 of the Criminal Procedure Code of the Russian Federation as not contradicting the Constitution of the Russian Federation, so far as on the basis of these provisions within their constitutional-law meaning in the system of operating legal regulation:

application of the Convention for the Protection of Human Rights and Fundamental Freedoms as a multilateral international treaty of the Russian Federation is ensured as an integral part of its legal system and execution of judgments of the European Court of Human Rights, passed on the basis of the Convention, coming out as a subsidiary inter-state judicial body on specific cases in the events if all internal constitutionally established intra-state means of judicial protection have been exhausted;

a court of general jurisdiction, an arbitration court, while reconsidering in procedure established by the procedural legislation of a case in connection with adoption of a judgment by the European Court of Human Rights, in which violation in the Russian Federation of human rights and freedoms is ascertained at application of a law or its individual provisions, having come to the conclusion on the possibility of application of a respective law only after confirmation of its conformity to the Constitution of the Russian Federation, petitions the Constitutional Court of the Russian Federation with a request to review constitutionality of this law; in any event a court of general jurisdiction, an arbitration court, carrying out proceedings of reconsideration of a judicial act having entered into legal force on application of a person, on whose complaint the European Court of Human Rights passed a judgment, ascertaining violation of the Convention for the Protection of Human Rights and Fundamental Freedoms by the provisions of the legislation of the Russian Federation, applied in this person's case, is obliged to suspend proceedings and petition the Constitutional Court of the Russian Federation with a request to review their conformity to the Constitution of the Russian Federation;

state bodies, entrusted with the obligation to ensure fulfilment by the Russian Federation of international treaties of which it is a party, having come to the conclusion on impossibility to execute a judgment of the European Court of Human Rights passed on a complaint against Russia, because in the part, obliging the Russian Federation to take measures of individual and common nature, it is based on the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms in the interpretation leading to its divergence with the Constitution of the Russian Federation, are entitled to petition the Constitutional Court of the Russian Federation for the determination of the question on the possibility of execution of the judgment of the European Court of Human Rights and taking measures of individual and general character, aimed at ensuring the fulfilment of this Convention; should the Constitutional Court come to the conclusion that the judgment of the European Court of Human Rights, so far as it is

based on the Convention for the Protection of Human Rights and Fundamental Freedoms in the interpretation contradicting the Constitution of the Russian Federation, cannot be executed, such judgment in this part is not subject to execution; the President of the Russian Federation, the Government of the Russian Federation, so far as they are entrusted with the obligation to ensure fulfilment by the Russian Federation of international treaties to which it is a party, having come to the conclusion on the impossibility to execute a judgment of the European Court of Human Rights, passed on a complaint against Russia, because in the part, obliging the Russian Federation to take measures of individual and general character, it is based on the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms in the interpretation leading to their divergence with the Constitution of the Russian Federation, are entitled to petition the Constitutional Court of the Russian Federation with a request to interpret respective provisions of the Constitution of the Russian Federation with the aim to eliminate uncertainty in their understanding bearing in mind the revealed conflict and international obligations of Russia as applied to the possibility to execute the judgment of the European Court of Human Rights and to take measures of individual and general character aimed at ensuring of fulfilment of the Convention for the Protection of Human Rights and Fundamental Freedoms.

This does not exclude the competence of the federal legislator, proceeding from the requirements of the Constitution of the Russian Federation and bearing in mind legal positions of the Constitutional Court of the Russian Federation expressed in the present Judgment, to envisage a special legal mechanism of determination of the question of the possibility or impossibility from the point of view of the principles of the supremacy and the supreme legal force of the Constitution of the Russian Federation to execute a judgment of the European Court of Human Rights, passed on a complaint against Russia, including with regard to measures of common nature, which would not contradict the legal nature of the Constitutional Court of the Russian Federation and its destination as the highest judicial body of constitutional control.

2. The present Judgment shall be final and shall not be subject to any appeal, it shall come into force immediately upon pronouncement, shall be directly applicable and shall not require confirmation by other authorities and officials.

3. The present Judgment is subject to immediate publication in Rossiyskaya Gazeta, the Collection of Laws of the Russian Federation and on the official Internet-portal of legal information (www.pravo.gov.ru.) The Judgment shall also be published in the Bulletin of the Constitutional Court of the Russian Federation.

The Constitutional Court
of the Russian Federation.

No. 21- P