Constitutional Law / Droit constitutionnel

2015

RUSSIA / RUSSIE

NIKITA ARAPOV* / EKATERINA DMITRIKOVA* /
ALEKSEI DOLZHIKOV* / ALEXANDER ZEZEKALO*

CONSTITUTIONAL REVIEW

Dialogue of the Constitutional Court of the Russian Federation with the European Court of Human Rights

ALMOST twenty years since the accession of the Russian Federation to the Council of Europe in 1996, followed by the subsequent adhesion to the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the European Convention, the Convention) in 1998, the year 2015 was marked by the growing

* PhD, Assistant Professor of Constitutional and Administrative Law, Law Faculty of St. Petersburg State University

* PhD, Associate Professor of Constitutional and Administrative Law, Law Faculty of St. Petersburg State University

* PhD, Associate Professor of Constitutional and Administrative Law, Law Faculty of St. Petersburg State University

* PhD, Associate Professor of Civil Law, Law Faculty of St. Petersburg State University

ERPL/REDP, vol. 28, no 2, summer/été 2016

controversy between the European Court of Human Rights (ECtHR) and the national authorities over the pre-eminence of the Constitution in the Russian legal system, arisen, in particular, in connection with certain Strasbourg Court's judgments[1]. The controversy eventually resulted in Judgment No. 21-P[2], in which the Russian Constitutional Court addressed the issue of the relationship between the provisions of the Russian Constitution and the ECtHR judgments in the event of a conflict. Thus, the dialogue of the Constitutional Court of the Russian Federation and the ECtHR and the introduction of new powers as to a constitutional review in connection with the implementation of international human rights bodies' judgments became one of the most important developments in the Russian constitutional law in 2015.

The Judgment of July 14, 2015 No. 21-P was delivered at the request of deputies of the State Duma (lower chamber of the Russian Parliament). The request raised before the Constitutional Court the issue of whether the Russian courts and other national governmental bodies had a legal obligation to implement judgments of the ECtHR against Russia even in cases where such judgments contradicted the Constitution of the Russian Federation.

The Russian Constitutional Court had started with the declaration of interaction between international and municipal law: "Bound by the requirement to observe an international treaty in force, such as the Convention for the Protection of Human Rights and Fundamental Freedoms, the Russian Federation is nevertheless obliged to en-

---

[1] The last drop as it may seem, became the case of *Anchugov and Gladkov v. Russia* (nos. 11157/04 and 15162/05, 4 July 2013), however, some time before, the judgment in the case of Konstantin Markin (*Konstantin Markin v. Russia* [GC], no. 30078/06, ECHR 2012 (extracts)) had already electrified audience within the Russian legal community. Both judgments are also mentioned and critically reviewed in Judgment No. 21-P.

[2] Judgment of the Constitutional Court of the Russian Federation of July 14, 2015 No. 21-P. Abstract in English at: http://www.ksrf.ru/en/Decision/Judgments/Documents/resume%202015%2021-%D0%9F.pdf, Full translation in English at: http://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2016)019-e

sure the supremacy of the Constitution of the Russian Federation within the framework of its legal system, which obliges 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 ECtHR".

According to the Constitutional Court, the issue was raised of the actual meaning of provisions of the Russian Constitution in the context of its collision with international obligations of Russia. This collision was subject to adjudication in constitutional proceedings. The latter was possible through the interpretation of the Constitution by the Constitutional Court on official request of authorized bodies with a view to clarifying uncertainty in the understanding of the constitutional provisions in relation to a possibility of enforcement of the ECtHR judgments and adoption of individual and general measures in implementing the European Convention.

In such a framework the Constitutional Court held "that a decision of an authorized interstate 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". The above entails both the supremacy of the Russian Constitution and the unenforceability in Russia of the ECtHR judgments which contradict constitutional provisions.

In addition, the Constitutional Court had set up a possible procedure to follow in such cases. In particular, the state bodies, responsible for the implementation of international treaties, had to address the Constitutional Court on issues of enforceability of judgments of an international tribunal and of adoption of individual and general measures in connection with their implementation. The Constitutional Court may reach the conclusion that the interpretation of the conventional provisions in a judgment of the ECtHR contradicts the

Constitution of Russia. Hence the judgment of the ECtHR in the respective part would not be subject to execution in the national legal order. The President and the Cabinet being responsible for the implementation of international treaties of the Russian Federation could also file a request with the Constitutional Court on constitutional interpretation with the purpose of excluding uncertainty and contradiction with the international obligations of Russia.

Thus, the Constitutional Court, on the one hand, confirmed that after its ratification the European Convention became a component of the Russian legal system, and Russia had to implement the ECtHR judgments. On the other hand, however, it attached particular weight to the principle of subsidiarity and took a stance that, in certain exceptional cases, Russia could refrain from such implementation, that is, to 'step back from its obligations' under the European Convention, if the interpretation of the provisions of the Convention underlying a ECtHR judgment infringed the constitutional values of the Russian Federation and if such a measure was the only way to avoid contravention. In brief, according to the Constitutional Court, the ECtHR's judgments are to be implemented in view of the supremacy of the Russian Constitution. By ratifying the European Convention Russia did not waive its national sovereignty in as much as to allow supranational organs to override its Basic Law - that was the Constitutional Court's principal political message[3].

The judgment stirred up a lively discussion in media concerning its underlying reasons and possible consequences, some of the observers associating and linking the top Russian Court's position with the notorious *Yukos* case[4]. Although such a connection cannot

[3] Thus, the Constitutional Court held that "… neither the European Convention on Human Rights and Fundamental Freedoms as an international treaty, nor legal positions of the European Court of Human Rights based on the latter, … repeal the priority of the Constitution for the Russian legal system".

[4] See, *e.g.*: Russia puts its law above European court rulings (available at http://www.bbc.com/news/world-europe-33521553).

be ruled out[5], Russia is far from being the first State Party to the European Convention to call Strasbourg Court's powers into question.

Russian constitutional judges recalled the practice of highest courts of different European countries, such as, Austria, the United Kingdom, Germany and Italy. As 'the most remarkable' was qualified the German Federal Constitutional Court's approach, demonstrated through the example of its ruling in connection with the implementation of the *Görgülü v. Germany* case (no. 74969/01, 26 February 2004)[6]. Not to overlook in this respect was also the UK Supreme Court's judgment in *R (on the application of Chester) v. Secretary of State for Justice McGeoch (AP) v. The Lord President of the Council and another* ([2013] UKSC 63 - 16 October 2013) where the ECtHR authority in *Hirst v. the United Kingdom (No 2)* [GC] (no. 74025/01, ECHR 2005-IX)[7] was subjected to particular

---

[5] Even though the Constitutional Court officials deny it (see, *e.g.*: "Russian authorities did not apply to the CCt with the request for interpretation of the ECtHR judgment in the Yukos case" (in Russian) available at http://www.interfax.ru/russia/453556).

[6] See: GFCC, Order of the Second Senate of 14 October 2004 - 2 BvR 1481/04 - §§ (1-72), (http://www.bverfg.de/e/rs20041014_2bvr148104-en.html). Apparently the Russian Constitutional Court took into account the following statements: "In the German legal system, the European Convention on Human Rights has the status of a federal statute, and it must be taken into account in the interpretation of domestic law, including fundamental rights and constitutional guarantees…" (§ 30); "The text of the Convention and the case-law of the European Court of Human Rights serve, on the level of constitutional law, as guides to interpretation in determining the content and scope of fundamental rights and constitutional principles of the Basic Law, provided that this does not lead to a restriction or reduction of protection of the individual's fundamental rights under the Basic Law…" (§ 32). For a comprehensive review of the case see, *e.g.*: *Lübbe-Wolff G.* ECHR and national jurisdiction - The *Görgülü* Case, *in: HFR*, 2006. S. 138 ff.

[7] In a sense it can be characterized as an English predecessor of the judgment *Anchugov and Gladkov v. Russia*, invoked by the Constitutional Court in Judgment No. 21-P.

scrutiny[8]. These judgments served as examples of steps, employed by the European colleagues in their endeavors to engage in a constructive dialogue with the Strasbourg Court. The Constitutional Court considered its own position to be in line with them. Formally and declaratively, the Constitutional Court reserved the possibility to resort to the "right to objection" only in the rarest cases, for the sake of contributing to the process of formation of the equilibrated ECtHR case-law and in no way for the purposes of self-isolation.

In general, the way in which the Russian Constitutional Court solved the collision between constitutional provisions and the interpretation of conventional rules by the ECtHR has been criticized in doctrine. For example, one of the first Case Notes on Judgment No. 21-P contained a remarkably critical conclusion: "the Constitutional Court wants to usurp the function of the guard of the bridge through which the European legal ideas and the principles can get into the Russian legal system … [but] national constitutional law does not provide such function as such"[9]. However, Judgment No. 21-P has one important point emphasizing the activism of the ECtHR in the promotion of legal values on which there is no absolute consensus yet around Europe. Accordingly, the relationship between the Constitutional Court of Russia and the ECtHR could be seen nevertheless as a dialogue.

---

[8] Among other things the judgment contained references to Lord Phillips in *R v. Horncastle* [2009] UKSC 14, [2010] 2 AC 373, § 11, who considered that under certain circumstances "…it is open to the domestic court to decline to follow the Strasbourg decision…" and to Lord Neuberger in *Manchester City Council v. Pinnock* [2010] UKSC 45, [2011] 2 AC 104, § 48, having stated that "This court is not bound to follow every decision of the European court".

[9] BLANKENAGEL A. / LEVIN I. V principe nel'zya, no mozhno!.. Konstitucionnyj Sud Rossii i delo ob obyazatel'nosti reshenij Evropejskogo Suda po pravam cheloveka (In principle it is impossible, but you can!.. Constitutional Court of Russia and the case of compliance of the European Court of Human Rights judgments) // *Sravnitel'noe konstitucionnoe obozrenie*. 2015. No. 5 (108). P. 157.

New Power of the Constitutional Court to Review the Enforcement of the European Court of Human Rights Judgments

Finally, in December, 2015 the Parliament had vested the Constitutional Court with a new power to assess the possibility to enforce the ECtHR judgments[10]. This legislative decision was preceded by the request of the Central Electoral Commission of Russia. The higher electoral body has argued on the unenforceability of the Strasbourg Court's judgment in the case of *Anchugov and Gladkov v. Russia* as contrary to Article 32 (3) of the Constitution of the Russian Federation, disenfranchizing the prisoners. The Constitutional Court found that the Central Electoral Commission had no right to lodge an application in such a case. The Court held that the power to lodge a request on possible collision between a judgment of the European Court of Human Rights and a constitutional provision had the President or the Government of the Russian Federation[11].

The holdings in this Ruling as well as in Judgment No. 21-P were implemented directly into the legislative provisions of the abovementioned amendments to the Federal Constitutional Law. These amendments empowered the Constitutional Court of the Russian Federation to rule on the possibility of complying with the judgments of an interstate body protecting human rights, proceeding from the supremacy of the Constitution of the Russian Federation, and set the procedure which the Constitutional Court would follow in considering such matters.

According to Article 3.1, paragraph 3.2 of the Federal Constitutional Law, a request to the Constitutional Court can be filed by a federal executive body authorized to protect Russia's sovereign interests by considering complaints against the Russian Federation by the interstate human rights protection bodies. The ground for consideration of a case by the Constitutional Court shall be a disclosure

---

[10] Federal Constitutional Law of December 14, 2015 No. 7-FKZ. For the English translation see http://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2016)006-e

[11] Ruling of October 6, 2015 No. 2055-O.

of uncertainty as to the possibility of enforcing an international decision taken on the basis of an international treaty interpreted by an international tribunal allegedly in contradiction with the Constitution of the Russian Federation (Article 36.2). The Federal Constitutional Law in Article 105.2 grants the President and the Cabinet of Russia the right to request the Constitutional Court to interpret constitutional provisions in order to avoid their uncertainty or any contradiction with the rules of international treaties interpreted by international human rights protection bodies. According to Article 104.3 of the Federal Constitutional Law, the scope of constitutional review on the enforceability of international tribunal decisions shall be the "foundation of the constitutional system of the Russian Federation and human rights regime established by the Constitution of the Russian Federation". Making the final conclusion on the case the Constitutional Court shall rule whether enforceability of a decision of an international human rights protection body is in conformity with the Constitution or not and whether such a decision is to be enforced fully or in part (Article 104.4). In the event of a negative conclusion, no measures (acts) aimed at the enforcement of the decision of the international human rights protection body in question shall be adopted within the territory of Russia (Article 106.2).

The Amendments to the Federal Constitutional Law on the Constitutional Court became the subject of criticism of different international institutions. The Venice Commission as an expert organ of the Council of Europe in its opinion had argued on the compatibility of such Amendments with the international obligations of the Russian Federation[12]. The Venice Commission emphasized the risks of a wide usage of the new power of the Russian Constitutional Court and pointed out that "the choice of the best way of enforcing a decision by an international court is a political and admin-

[12] Final Opinion on the Amendments to the Federal Constitutional Law on the Constitutional Court adopted by the Venice Commission at its 107th Plenary Session (Venice, 10-11 June 2016) CDL-AD(2016)016-e // http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)016-e

istrative matter, not a constitutional one and it is primarily the responsibility of the government. If it were tasked with the whole question of enforcement, the Constitutional Court would risk becoming the political arbiter of all controversies surrounding international decisions. … The Constitutional Court may therefore be asked (only) to assess whether a specific form or modality (measure) of execution raises an issue of constitutionality (such cases should be rather exceptional)".

Thus, the national legislature created the new mechanism for constitutional review of international tribunal decisions, which has no analogue in European legal orders. It allows the Russian Constitutional Court to decide whether decisions of an international tribunal can or cannot be applied in Russia. This new mechanism was applied just recently in the case of *Anchugov and Gladkov*[13] - a subject-matter which deserves particular consideration in the next Constitutional Law Chronicle.

E-justice in Constitutional Court Proceedings

In 2015, information technologies in the Constitutional Court proceedings underwent several developments. Initially the legislative intent of the bill covered only the questions of broadcasting and streaming in Internet Constitutional Court's hearings[14]. It introduced two ways of access to the hearings online: at the initiative of the Court or of the participants to a trial. It concerns only the open-door hearings of the Constitutional Court. There is prohibition of filming, photographing, broadcasting and streaming in the Internet in case of close-door hearings of the Court. The detailed procedure of broadcasting and online streaming is established by the Rules of Procedure of the Constitutional Court of the Russian Federation.

During the readings in the State Duma the bill was amended with a regulation on e-filing of a complaint to the Constitutional Court of the Russian Federation. An electronic complaint can be made

[13] Judgment of the Constitutional Court of the Russian Federation of April 19, 2016 No. 12-P.

[14] Federal Constitutional Law of June 8, 2015 No. 5-FKZ.

through filing a form on the official site of the Court[15] or sending it via an e-mail. However, the submission of such complaint requires the use of a strengthened qualified digital signature and the one who submits a complaint to the Constitutional Court via the Internet should attach all documents; no submission of hard copies of documents to the Court in such a case is required.

STATE DUMA AND ELECTION SYSTEM

New Scheme of Single-member Districts

Last year the combination of majority and proportional system for the State Duma elections (the lower chamber of the Federal Parliament) was restored[16]. In November 2015 the new scheme of single-member districts in elections of deputies of the State Duma was approved[17]. This new scheme will be used at State Duma elections in September 2016 and for the next 10 years. More than 110 million of voters in all regions of Russia were divided into 225 constituencies. The average rate of representation for one district is equal to 500 000 voters. In 32 regions of the Russian Federation only 1 single-member constituency, in 26 regions - 2 districts, in the rest 27 regions - 3 and more districts were created. The maximum number of constituencies was created in the Federal city Moscow (15), the Moscow region (11), St. Petersburg and Krasnodar Krai (8), the Rostov and Sverdlovsk oblast (7), the Republic of Bashkortostan and the Republic of Tatarstan (6), etc. Nevertheless, the principle according to which even a region with small population has at least one constituency, was secured in legislation. This principle was upheld by the Constitutional Court in 1998. That case argued on the constitutionality of the equal suffrage restriction with a view to guaranteeing federalism and representation in the State Duma of

[15] https://petition.ksrf.ru/

[16] See Constitutional Law Chronicle. Russia. *ERPL/REDP*, vol. 27, no 2, summer/été 2015.

[17] Federal Law of November 3, 2015 No. 300-FZ.

regions of the Russian Federation with small population[18]. According to the new voting system, the average rate of representation is equal to approximately 500 000 voters. So one MP could be elected in some regions with minorities in a more privileged position in comparison with other Russian regions. For example, the Nenets Autonomous District constituency has only 33 087 voters and the Chukotka Autonomous District constituency - 34 722 voters. The situation is similar in many national or distant Russian regions: the Magadan region has one constituency for 110 173 voters, the Jewish Autonomous Oblast - for 131 876, the Altai Republic - for 155 620, the Republic of Tyva - for 180 577, the Republic of Ingushetia - for 211 739, the Republic of Kalmykia - for 213 717, the Kamchatka Krai - for 244 781.

The most controversial issue in the new electoral system of the State Duma is the so-called "petal" redrawing of single-member district boundaries. The majority constituencies have been used for the last time in State Duma elections in 2003. At that time, megalopolises, such as St. Petersburg, Yekaterinburg, Novosibirsk, Nizhny Novgorod, etc., had indivisible voting districts. The new scheme is called "petal" because of the sectoral form of constituencies which include one part from urban and another from rural (suburban) territories. The authors of the bill from the United Russia (Edinaya Rossiya) Party see the official purpose of districts' redrawing in the stimulation of MPs' special concern on the problems of rural communities[19]. At the same time, some experts consider such a scheme as a "Gerrymandering", *i.e.* a manipulation with electoral districts' boundaries which gives the advantage to the United Russia Party. The opinion is expressed that this is the next initiative of the federal power aimed to give advantage to its candidates. Unlike the pro-government candidates, opposition activists are *a priori* in a more disadvantaged position in those districts where different groups of population are mixed. The conservative attitude of voters in a rural community should "extinguish a fire" of protesters from

[18] Judgment of the Constitutional Court of the Russian Federation of November 17, 1998 No. 26-P.

[19] https://rg.ru/2015/10/16/okruga-site.html

big cities (so-called angry townsfolk)[20]. In any event redrawing of electoral districts was a kind of reaction on opposition mass protests in megalopolises after State Duma Elections in December 2011[21]. The new scheme spreads those urban voters among a rural community who are more active in the voting day to the benefit of the Unified Russia Party or other non-opposition parties which enjoy support in the country, for example, the Communist Party of the Russian Federation (KPRF).

Transfer of Voting Day of the State Duma

At the initiative of three parliamentary fractions the elections of deputies of the State Duma have been transferred to three months earlier, from December 2016 to the Single Voting Day in September 2016[22]. The legislator justifies such a transfer of the voting day by federal budget proceedings. According to Article 192 of the Budget Code of the Russian Federation the draft of federal budget is introduced to the State Duma no later than October 1 of the current year. So the new MPs could adopt the budget act for the next financial year by 2016. At the same time, parliamentary immunity and certain social benefits will be guaranteed for the former MPs if they are not elected in the State Duma or other representative bodies till December 4, 2016. Before these amendments the Council of Federation applied to the Constitutional Court of the Russian Federation on the constitutionality of the transfer of elections of deputies of the State Duma. The Constitutional Court recognized such transfer to be constitutional if it was made beforehand, and emphasized that "citizens, political parties and other persons concerned - taking into account the factor of forthcoming elections - should not be limited in the opportunity to be properly prepared for an election

20 http://www.forbes.ru/mneniya-column/vertikal/298627-dzherrimendering-chemu-uchit-predvybornaya-geometriya

21 See Constitutional Law Chronicle. 2011. Russia. *ERPL/REDP*, vol. 24, no 2, summer/été 2012.

22 Federal Law of July 14, 2015 No. 272-FZ.

campaign"[23]. Otherwise, according to the Court, the principle of legitimate expectations would be broken as it includes the legal certainty requirement, providing citizens and corporations with adequate time and other opportunities for adaptation to the changed normative scope of their vested rights.

One more amendment of the election system of the State Duma is connected with the rules of registration of candidates. In July 2015 the procedure of verification by election commissions of the information submitted by candidates on elections of the State Duma was changed[24]. These changes concern the interaction between election commissions and the Central Bank of Russia as concerns verification of information on bank accounts and securities, in particular by uploading such data on the Internet.

Single Voting Day 2015

The Single Voting Day took place on September 13, 2015. The elections were held in 83 of Russian Regions (except for Kabardino-Balkaria). In particular, 21 heads of regions, 11 regional parliaments, and deputies of Municipal Councils in 23 cities were elected. More than 51 million voters took part in the elections[25].

55 from 78 registered parties in Russia had participated in the elections. The majority of mandates in regional parliaments and municipal councils was taken by the members of the United Russia Party, the Communist Party of the Russian Federation, the Liberal Democratic Party of Russia, the parties Just Russia, "Yabloko" and the Civil Platform.

The Single Voting Day 2015 had unexpected results for federal authorities in two regions of the Russian Federation. The Governor elections in the Smolensk region were won by the candidate of the Liberal Democratic Party of Russia Alexey Ostrovsky with 65,18%

---

[23] Judgment of the Constitutional Court of the Russian Federation of July 1, 2015 No. 18-P.

[24] Federal Law of July 13, 2015 No. 231-FZ.

[25] http://tass.ru/elections-2015

votes[26]. The most unexpected was the victory of communist Sergey Eroshchenko in the second round on September 27, 2015 in the elections of the Governor of the Irkutsk region. The member of the Communist Party of the Russian Federation had got 56,39% of the votes, being ahead of his competitor from the United Russia Party Sergey Levchenko who received only 41,46%[27].

In January 2015, the amendments of federal electoral laws which provide for the discretion of a regional parliament to include in municipal elections the ballot option "none of the above", came into force. Before the Single Voting Day 2015 only the Parliament of the Kaluga region had used such opportunity and the voters had got the right to vote "against all" for the first time after its abolishment in 2006.

CONSTITUTIONAL RIGHTS

The Law on "Undesirable" Foreign and International Organizations

The Russian legislator created in 2015 the concept of an undesirable organization in addition to the concept of a foreign agent. In the latter case, only Russian non-governmental organizations (NGOs) could be regarded as foreign agents, while in the former case, the Ministry of Justice obtained the power to "stigmatize" foreign NGOs and international organizations[28]. An organization can be declared "undesirable" if its activity within the territory of the Russian Federation threatens the constitutional fundamental principles, the defense capacity of the country or the state security. The drafters of the bill declared the prohibition of activity in Russia of terrorist, extremist and nationalist organizations as its main objective. Besides, the prevention of a threat of "color revolutions" or ethnic (religious) conflicts was directly listed among the expected outcomes of the adopted law.

---

[26] http://www.kommersant.ru/doc/2810408

[27] http://www.rbc.ru/rbcfreenews/5608e2069a79477698185acc

[28] Federal Law of May 23, 2015 No. 129-FZ.

A co-decision of the Prosecutor General and the Ministry of Foreign Affairs declaring an NGO as undesirable will limit certain aspects of the freedom of association. Among them are freezing of the NGOs' accounts and assets, a ban on the establishment of branches and NGOs in Russia, prohibition of distribution of information materials etc. If such a decision is adopted, the Ministry of Justice will include the name of the undesirable organization in a special register and will publish it on its official website. To date there are 5 foreign NGOs in this register: The National Endowment for Democracy, OSI Assistance Foundation, Open Society Foundation, U.S. Russia Foundation for Economic Advancement and the Rule of Law, National Democratic Institute for International Affairs[29]. Working with, or assistance to an undesirable organization is punishable for Russian citizens and organizations by high administrative fines. In case of repeated offense, criminal sanctions may be imposed, including imprisonment up to six years.

Ongoing Limitations of NGOs' Freedoms

In 2015 the tendency on restriction of possible political activity of Russian NGOs persisted. According to amendments to the Federal Law "On political parties", the possibility of reorganization of NGOs into political parties has been excluded[30]. In addition, each party has to have in its official name the phrase "political party", but other corporations and NGOs in particular cannot use this phrase in their official name.

There was some liberalization in the procedure of recognition of NGOs as foreign agents[31]. According to changes in the Federal Laws "On public associations" and "On non-profit organizations", a group included in the register of foreign agents can file an application to the Ministry of Justice of the Russian Federation for withdrawal

[29] See http://minjust.ru/activity/nko/unwanted

[30] Federal Law of May 23, 2015 No. 133-FZ.

[31] See Constitutional Law Chronicle. 2012. Russia. *ERPL/REDP*, vol. 25, no 2, summer/été 2013.

from this register[32]. The procedure of withdrawal of an NGO from this register is as follows: *1)* the group which is already in the register of foreign agents assumes the termination of political activity; *2)* absence for one year from application of financing from foreign sources; *3)* inspection conducted by the Ministry of Justice of the Russian Federation; *4)* confirmation of the refusal of the granted foreign funding. As a result of this inspection the decision on withdrawal of an NGO from the register of foreign agents, or on refusal to withdraw, can be made.

Such amendments to the regulation on the freedom of association were grounded on cases where some groups were recognized as foreign agents even if their main field of activity was non-political (protection of environment, rights of disabled persons or children). This was possible due to the broad interpretation by the Ministry of Justice of the Russian Federation of the concept of NGOs' political activity. For example, if public officials had participated in a training or a workshop, organized by an NGO, this could be included in the register of foreign agents only on the formal fact of financing of its activity by foreign or international donors.

In total, by the end of 2015, according to the Ministry of Justice of the Russian Federation the register of foreign agents included 108 groups[33]. The formalism in the recognition of Russian NGOs as foreign agents led to a deficit in the financing of many groups and even raised the issue of their liquidation. In particular, this deficit of financing should be compensated through the register of socially oriented NGOs which was actively extended by the federal government since its creation in 2010. For example, socially oriented NGOs whose activities were connected with social service[34] and mobility of labor resources were listed in this register[35]. Inclusion in the register of socially oriented non-profit organizations allows them to receive afterwards additional tax preferences, exclusive state grants and other social benefits. According to information of

---

[32] Federal Law of March 8, 2015 No. 43-FZ.

[33] https://www.gazeta.ru/politics/2015/12/16_a_7972691.shtml

[34] Federal Law of May 2, 2015 No. 115-FZ.

[35] Federal Law of November 28, 2015 No. 358-FZ.

the Russian Ministry of Justice, in 2014 NGOs received more than 10 billion rubles, but, as some experts pointed out, among such grantees there were NGOs affiliated with the Russian Orthodox Church, or, for example, there was a grant for the biker club "Night wolves" for a New Year trees project[36]. Thereby the Russian Government, on the one hand, ignores its negative obligations, infringing on the freedom of association of one group of NGOs, and on the other hand, it broadens the scope of positive obligations, providing measures of social support for other NGOs.

Law on the Right to Be Forgotten

The year 2015 was marked by significant regulation of constitutional rights to information on the Internet, which has lately been called "the Law on the right to be forgotten"[37]. The intent of the amendment in the legislation adopted in July 2015 is to restrict the dissemination on the Internet of information about Internet users. Any user could claim the operators of the Internet search engines to remove users' personal information from their results. It suffices if such personal information violates the legislation, is incorrect or "no longer relevant because of subsequent events or actions" (for example, information about events occurred more than 3 years ago). The law did not concern information about criminal activities of persons. Representatives of Russia's biggest search engine Yandex have argued that the law will lead to significant infringement of the public interest to information. In particular, they said: "We believe that control over dissemination of information should not restrict free access to public data. It should not upset the balance of personal and public interests"[38]. Moreover, some Internet experts think that the real aim of the law on the right to be forgotten is not the protection of ordinary citizens as declared but that the law

---

36 http://www.bbc.com/russian/russia/2016/02/160210_ngo_political_activity

37 Federal Law of July 13, 2015 No. 264-FZ.

38 https://themoscowtimes.com/news/russia-adopts-law-giving-internet-users-the-right-to-be-forgotten-47891

helps to rewrite the past and hide discrediting evidence[39]. Beside its material deficiencies, the law has many procedural controversial points. Web companies will have only 10 days to comply with the request of an Internet user claiming on his right to be forgotten. A user also has procedural preferences because he could bring a suit not only at the location of Web companies but also at his place of residence. Violation of the duties of Web companies to remove users' personal information could lead to high administrative fines up to 1 million rubbles.

Human Rights Defender (Ombudsman) in the Russian Federation

The aim of amendments in this sphere could be described as an attempt to create an integrated system of human rights defenders (ombudsmen) that is based on the cooperation between federal and regional (in the constituent entities of the Russian Federation) human rights defenders (ombudsmen).

In order to achieve this goal, the Parliament (the Federal Assembly) passed Federal Constitutional Law of April 6, 2015 No. 3-FKZ. This act amended Federal Constitutional Law "On the Human Right Defender in the Russian Federation" No. 1-FKZ by adding Article 36.2. This article establishes that, for the purpose of ensuring the effective operation of regional ombudsmen, the Federal Ombudsman shall be entitled to provide regional ombudsmen with organizational, legal, informational and other assistance within his powers. In addition, the Federal Ombudsman has the right to establish the Council of Human Rights Defenders (Ombudsmen) as an advisory body. This body shall consist of one representative from each federal district being a regional ombudsman of the Russian Federation. The law mentioned above also vests the Federal Ombudsman with the authority to send regional ombudsmen enquiries in connection with complaints he receives.

In connection with the above-mentioned tendency is also Federal Law of April 6, 2015 No. 76-FZ. This act amended Federal Law On General Principles of Establishing Legislative (Representative) and

[39] http://www.newsru.com/russia/01jan2016/oblivionactrus.html

Executive Bodies of Constituent Entities of the Russian Federation of October 6, 1999 No. 184-FZ by adding Article 16.1, on the Human Rights Defender in a Constituent Entity of the Russian Federation. In particular, this article establishes that in order to provide additional state guarantees of protecting rights, freedoms and legitimate interests of an individual there may be established a position of a regional ombudsman in the constituent entities of the Russian Federation. Previously, this institution did not have any legal grounds in federal laws and could be established only as an exercise of a constituent entity's right to determine its own institutional structure. At present, Article 16.1 contains several provisions concerning the regional ombudsman's legal status. In particular, it sets forth his general authorities; requirements for a candidate for the position of a regional ombudsman (a citizen of the Russian Federation, not younger than 30 years old, who is to have an irreproachable reputation, a degree from a university and also deep knowledge of the human rights and freedoms, and some experience in their protection); procedure for the appointment and termination of authority of regional ombudsmen (in the light of the tendency mentioned at the beginning of this part of the chronicle it is worth noting that the consideration of candidates for the position of a regional ombudsman with the Federal Ombudsman precedes its approval by a legislative body of a constituent entity of the Russian Federation); a ban to occupy any other state or municipal position or be a member of a political party.

Meanwhile, we should also mention that, even though Article 16.1 determines general features of a regional ombudsman's legal status, the specification of his authorities and particular order of his activity are the subject of regional laws.

One of the amendments in this sphere relates to the prohibition for federal and regional ombudsmen to have the nationality of or residence in a foreign state.

FEDERAL GOVERNMENT

Changes in the Structure of Federal State Bodies

On March 31, 2015 the Federal Agency for Ethnic Affairs was established. Its general functions are as follows: consolidating the unity of multinational people of the Russian Federation; ensuring inter-ethnic harmony; ethno-cultural development of the peoples of the Russian Federation; protection of the rights of national minorities and indigenous peoples of the Russian Federation; prevention of all forms of discrimination based on racial, ethnic, religious or linguistic affiliation; prevention of any attempts to incite racial, national and religious discord, hatred or enmity.

On November 29, 2014 the Federal Law On the Development of the Crimean Federal District and the Free Economic Zone on the Territory of the Republic of Crimea and the Federal City of Sevastopol was passed by the Parliament (the Federal Assembly). To ensure proper execution of the Law, the Ministry of Crimea Affairs was established on March 31, 2014. Its distinctive feature was, in particular, the location area that was determined not only in the capital of the Russian Federation but also on the territory of the Crimea Peninsula (Sevastopol, Simferopol). This circumstance, as well as the fact that, as a general rule, issues of socio-economic development of the territories of the Russian Federation are the province of the Ministry of Economic Development of the Russian Federation, allows to make a conclusion that the Ministry of Crimea Affairs was established as a temporary federal state body for the prompt integration of Crimea into the Russian socio-economic environment. Thus, on June 15, 2015, after having achieved this aim, the Ministry of Crimea Affairs was dissolved and its authorities were transferred to the Ministry of Economic Development.

On June 21, 2015 the Federal Tariff Service was dissolved and its functions were transferred to the Federal Antimonopoly Service. This shows a tendency to reduce the number of federal executive bodies. For instance, in 2014 the Federal Migration Service was dissolved and its functions were transferred to the Ministry of Internal Affairs; in 2016 the Federal Service for Fiscal and Budgetary

Supervision was dissolved and its functions were shared between the Federal Treasury, the Federal Customs Service and the Federal Taxation Service.

On December 28, 2015 the Federal Space Agency was dissolved with its functions transferred to the State Space Corporation "Roscosmos". According to Article 7.1 of the Federal Law On Non-Profit Organizations, a state corporation is a legal entity established by the Russian Federation for the execution of social, administrative or other socially useful functions. In order to found a state corporation, a federal law must be adopted. In 2015, the Parliament (the Federal Assembly) passed the Federal Law On the State Space Corporation "Roscosmos" establishing that "the Corporation is an authorized body in the field of research, development and use of Space with the mandate to carry out public administration and legal regulation of space activities on behalf of the Russian Federation." The state corporation could be treated as an example of a legal entity of public law (*personne morale de droit public*) that receives state authorities in a legally determined order. Examples of transferring state authorities to a legal entity have been known since at least 2007, when the Federal Agency on Atomic Energy was dissolved and its functions were transferred to the State Atomic Energy Corporation "Rosatom".

Regulatory Impact Assessment

As a reminder, the instruments of a Regulatory Impact Assessment[40] (hereinafter - RIA) have been used officially since the Government of the Russian Federation granted[41] an authority to administrate it[42] to the Ministry of Economic Development in 2010. Further development of the RIA is related to the Presidential Decree

[40] It is worth mentioning that the RIA in Russia is only applied to regulations on economic affairs.

[41] Regulation of the Government of the Russian Federation of May 15, 2010 No. 336.

[42] Order of the Ministry of Economic Development of August 31, 2010 No. 398 (stale).

On Main Directions of Improving Governance of May 7, 2012 No. 601. In furtherance of the Presidential Decree abovementioned, the Russian Government passed the regulation of December 17, 2012 No. 1318, which determined the order for federal executive bodies to apply the RIA to a number of drafts (draft legal acts of federal executive bodies, draft amendments of federal laws (bills) and draft decisions of the Eurasian Economic Commission). On July 2, 2013 the Parliament (the Federal Assembly) passed Federal Law No. 176-FZ establishing that the RIA shall be implemented in the constituent entities of the Russian Federation and the municipal entities in 2014 and 2015, respectively.

It is worth mentioning that, although the constituent entities of the Russian Federation passed the laws implementing the RIA, they faced methodological difficulties. In this regard, the Ministry of Economic Development passed the RIA guidelines concerning draft legal acts of the constituent entities of the Russian Federation[43] and founded a web portal on RIA[44]. Because of the abovementioned difficulties, it was also decided to postpone the RIA implementation in municipal entities. Initially, Federal Law of July 2, 2013 No. 176-FZ prescribed the RIA to be implemented in urban districts (that are regional capitals) in 2015 with other urban districts and municipal districts in 2016 and urban and rural settlements in 2017, respectively. Subsequently, however, the obligation to implement the RIA under the original terms was retained only for urban districts which are the administrative centers (regional capitals) of the constituent entities of the Russian Federation; in relation to other urban districts and municipal districts, it was established that the laws of the constituent entities of the Russian Federation shall determine those ur-

---

[43] Order of the Ministry of Economic Development of March 26, 2014 No. 159.

[44] The main functions of the portal are, in particular:

- to create a unified informational resource on the RIA for all its participants containing full information about RIA as well as necessary training materials;

- to ensure access for representatives of federal, regional and municipal bodies to learn the RIA remotely.

ban districts and municipal areas in which the execution of RIA will be mandatory; the rest of municipal entities have the right to implement the RIA at their discretion[45].

Besides the postponement of the implementation of the RIA for some types of municipal entities, other amendments of the RIA were made in 2015. Some of them concern the RIA development at the federal level while the others at the regional level. In particular, in comparison with the previous regulation, Federal Law of December 30, 2015 No. 447-FZ establishes that legal acts of the constituent entities of the Russian Federation and municipal entities are not subject to the RIA if they are related to budget or tax regulation. At the federal level, the Government of the Russian Federation passed Regulation of January 30, 2015 No. 83, which provides the RIA with important tools. The most important one may be described as the "one-in, one-out" principle, according to which a legal act with a high degree of regulatory impact is to include provisions on the abolition of proportionate requirements from the same area of regulation. Another important amendment is adding a pilot launch of a proposed legal act. It implies the provisional application of a legal act on the territory of several constituent entities of the Russian Federation for the purpose of ascertaining possible positive and (or) negative effects of passing such a draft legal act whose adoption is hard to be assessed in terms of impact on entrepreneurial and other economic activities beforehand.

Moreover, it is worth mentioning that Regulation of the Government of the Russian Federation of January 30, 2015 No. 83 establishes an Actual Impact Assessment (hereinafter - AIA). It is applied to analyze whether the objectives stated in the RIA report have been achieved, to identify and assess both actual positive and negative consequences of the adoption of a legal act as well as to identify the provisions of this act that unduly hamper the conduct of business and other economic activities. The AIA replaced the so-called expertise of legal acts carried out in order to identify acts that unreasonably hamper the conduct of business and investment ac-

[45] Federal Law of December 30, 2015 No. 447-FZ.

tivities[46]. At the same time, there are both the expertise of legal acts and the AIA[47] kept at the regional level. The first one is applied to legal acts that have not been subjected to RIA, whereas the second one is used as a monitoring tool to check the RIA efficiency.

As a summary, we should note that the development of the RIA tools is still in progress. In particular, whilst the RIA at the regional level is subject to both draft laws and draft regulations, the federal draft laws are subject to the RIA in a fairly limited form. It is only in those cases when it is prepared by the executive power (the Government of the Russian Federation) that the draft law is subject to the RIA. If the draft law is prepared in a different manner (*e.g.*, in the Parliament), the State Duma, according to paragraph 104 of the Rules of the Government and paragraph 37 of the Resolution of the Russian Government of December 17, 2012 No. 1318, may submit a draft law for the RIA on their own discretion; but still submitting such bills for the RIA is not mandatory for the State Duma.

Ongoing Restrictions on Officials' Economic Rights

Previous chronicles mentioned that "one of the most significant trends in the Russian constitutional development in 2013 was the establishment of additional restrictions on officials under the imperatives of national security protection … certain categories of officials who within their professional duties made decisions concerning state sovereignty and national security, were prohibited from opening and possessing foreign bank accounts, from storing cash and valuables in foreign banks located abroad as well as from using foreign financial instruments"[48]. In this regard, it is worth noting that the year 2015 is marked by the ongoing restrictions on offi-

[46] Regulation of the Government of the Russian Federation of July 29, 2011 No. 633 (stale); Order of the Ministry of Economic Development of November 9, 2011 No. 634 (stale).

[47] Order of the Ministry of Economic Development of March 26, 2014 No. 159.

[48] See Constitutional Law Chronicle. 2013 Russia. *ERPL/REDP*, vol. 26, no 2, summer/été 2014.

cials' economic rights[49]. Most of the amendments are rather technical than substantial and relate to the procedure of termination of the officials' authorities. However, there are several amendments that are worth mentioning. First of all, the list of officials who are "prohibited from opening and possessing foreign bank accounts…" was supplemented by adding members of the municipal entities' representative body who hold this position on a regular basis (permanently). Moreover, in comparison with the previous regulation, not only the chief of a city district or municipal district is under the above-mentioned prohibition but the chief of any municipal entities holding the position of the chairman of local administration and the chairman of local administration of any municipal entities are under the same prohibition as well[50]. Secondly, if the officials - whose income, expenses, assets and material obligations are to be reported - do not submit such a report or do it with delay, they are to lose any authorities as officials.

Development of the Russian Judiciary

Previous chronicles mentioned the judicial reform being in progress in the Russian Federation[51]. The reform dissolved the Supreme Arbitration Court and transferred its authorities to the Supreme Court. As a next step of the reform, the judicial proceedings are under amendment. For instance, the so-called Unified Code of Judicial Procedure is being prepared in the State Duma at the moment[52]. It is supposed to substitute the Civil Procedure and the Arbitration Procedure Codes. Whilst it is only a perspective, the Administrative Court Procedure Code (hereinafter - ACPC) has been a reality since September 15, 2015.

---

[49] Federal Law of November 3, 2015 No. 303-FZ.

[50] Federal Law of May 7, 2013 No. 79-FZ.

[51] Constitutional Law Chronicle. 2013 Russia. *ERPL/REDP*, vol. 26, no 2, summer/été 2014; Constitutional Law Chronicle. 2014. Russia. *ERPL/REDP*, vol. 27, no 2, summer/été 2015.

[52] http://www.garant.ru/article/675928/; http://www.consultant.ru/document/cons_doc_LAW_172071/.

The ACPC determines the procedure of hearing the litigations arising from administrative and other public legal relationships. Before the adoption of the ACPC, it was regulated by the provisions of the Civil and Arbitration Procedure Codes. According to Article 124 of the ACPC, an administrative lawsuit may consist of any claims that are related to the judicial protection of rights, freedoms and legitimate interests in the sphere of public legal relationships. For instance, it could claim to void a legal act passed by an administrative defendant, to oblige an administrative defendant to do or refrain from doing certain actions. It is also worth mentioning that the ACPC is only applied to legal disputes heard by the Supreme Court and general jurisdiction courts (regular courts) and does not cover litigations heard by the Russian Constitutional Court, constitutional courts of the constituent entities of the Russian Federation and arbitration courts (in comparison with the previous regulation, the latter hear only the litigations arising from public legal relationships that are related to intellectual property). It also does not apply to administrative offense proceedings and claims to recover losses from the budget.

In spite of the fact that one could suppose that the Civil Procedure Code is no longer applied to a litigation one party of which is a person endowed with public authority, there are some exceptions. A litigation connected both with a dispute on civil rights and a claim for non-normative acts of public authorities to be voided as well as a litigation on the recognition of such an act as void - if it could lead to the emergence, alteration or termination of civil rights and obligations - are still to be considered in civil proceedings. Thus, lots of disputes - such as disputes on the recognition of non-normative act refusing to grant a permission to rent, or on the recognition of the result of competition for a position of civil service as void - are to be settled in civil proceedings. Whilst this approach is supported by the Supreme Court[53], commentators mostly judge it negatively. The most controversial aspect is that the Civil Procedure Code does not have - as it did - any special regulations on hearing

[53] Informational Letter of the Supreme Court of November 5, 2015 No. 7-BC-7105/2015.

legal disputes one party of which are public authorities. For instance, there is no longer a special regulation on the allocation of the burden of proof, which means that it is not the defendant (public authorities) that is to prove the legality of an act, but rather the plaintiff (natural or legal entities) is to prove it is illegal.

In accordance with the ACPC, the parties of administrative litigation are named as an administrative plaintiff and an administrative defendant. The parties cannot be considered as equal as far as the obligatory party of the litigation is the person endowed with state or other public authority. However, the unequal status of the parties did not become an obstacle for the legislator to establish rules allowing an agreement on reconciliation[54].

Although as a general rule the citizens could plead a case on their own, there are some types of litigations that require a claimant to have a law degree in order to plead a case on their own[55]. In case of not having a degree in law, the claimant has a right to participate in litigation through a representative who is to have a law degree (Article 55 of the ACPC).

The ACPC provides a group of individuals with the right to file a collective administrative lawsuit (class action). However, there are no legal guarantees to protect the interests of an individual - member of the administrative class action (for example, notification of persons, enforcement of the decision). Along with the class action, simultaneous participation of several claimants is possible within the joinder of the parties whose distinctive feature is that several persons are not united in one person (collective plaintiff) - as they are in the case of a class action - but participate in a litigation as an independent party.

A sufficient feature of administrative court proceedings is the adversary principle combined with the active role of a court (Arti-

---

[54] As an exception to the rule above mentioned, the proceedings on contesting legal acts could be mentioned. In this cases an agreement on reconciliation cannot be signed by the parties (Article 213 of the ACPC).

[55] For instance, the legal disputes on contesting legal acts heard in the Supreme Court of the constituent entities of the Russian Federation and in the Supreme Court of the Russian Federation (Article 208 of the ACPC).

cles 14, 213 of the ACPC). The court is entitled to perform any necessary actions to ensure the full and comprehensive investigation of all important circumstances of a case and is not restricted by the subject-matter and grounds mentioned in a lawsuit. It is also worth mentioning that the court is entitled to oblige the state or municipal bodies, state or local officials who passed the contested legal act to adopt a new legal act replacing the one having been recognized by the court as fully or partly void. This judgment shall be passed in the case of the court determining during the litigation that there was a lack of regulation on some matter of public legal relationships that could probably have led to violation of rights, freedoms and legitimate interests of an indefinite range of persons.

The ACPC provisions on the allocation of the burden of proof are similar to those of the Civil and Arbitration Procedure Codes. Parties are required to prove the circumstances to which they refer as the grounds of their claims or objections; meanwhile, there are some exceptions for certain types of litigation. For instance, the burden of proving the legality of contested legal acts or actions is vested in the subject, endowed with authorities to pass such acts or carry out such actions. As an independent type of proof the ACPC recognizes electronic documents. From January 1, 2017 the documents attached to an administrative lawsuit may be submitted to the court in electronic form.

The judicial reform aims at creating the conditions of timely consideration of any administrative disputes. Besides the reduction of time allowance for hearing administrative litigations, the ACPC established a simplified hearing procedure that does not require oral pleadings and trial transcript. This procedure may be applied to any type of administrative judicial dispute at the discretion of the parties. The timely consideration of administrative disputes is also ensured by the short term of hearing and the right of the parties to present and receive electronic documents as well as to use video conferencing. Moreover, the ACPC provides litigation with modern technologies. From January 1, 2017 an administrative lawsuit or appeal may be submitted to the court by filling in the form posted on

the official website of the relevant court[56]. The writ of execution may take the form of an electronic document completed and signed with an electronic signature. We believe that the implementation of the relevant provisions of the ACPC largely simplifies the participation of parties in the administrative court proceedings.

The main reason to reject the previous legislative model of hearing litigations arising from public legal relationships lies in its peculiarities[57]. However, it must be noted that most of the procedure rules have been transferred to the ACPC from the Civil Procedure Code as well as from the Arbitration Procedure Code. Many commentators consider this to be the main reason of the ACPC drawbacks[58].

Reformation of Local Self-Government

The previous chronicle mentions that "the President in his message to the Federal Assembly in 2013 introduced the idea of a municipal reform aimed to increase the effectiveness of local government and to open it up to population. The reformation process, started in 2014, included three significant innovations… The last innovation was establishing alternative methods of appointment of local authorities, which in fact reduced the possibilities of the population to elect them directly. This amendment did not avoid criticism either as limiting the constitutional guaranties of local self-government. The arguments pro and contra municipal reform are

---

[56] The rest of procedure codes - such as the Civil, Arbitration and Criminal Procedure Codes as well the Administrative Offenses Code - share similar provisions. As a digression, let us also note that the electronic submission of a lawsuit and other documents has been in use in the Constitutional Court since August 15, 2015.

[57] Explanatory note to the draft Federal Law No. 246960-6 "Administrative Court Procedure Code" (http://base.garant.ru/57728463).

[58] See ROZHKOVA M.A. / GLAZKOV M.E. / SAVIN M.A. *Actual Issues of Unification of Civil and Arbitration Procedure Legislation*. Moscow: INFRA-M, 2015.

not exhausted as far as the implementation of the mentioned innovations is still in progress"[59].

In this regard it is worth noting that the most significant amendments of the year 2015 in local self-government were connected with a new approach to assuming municipal positions that allows a representative body of a municipal entity[60] to appoint a chief officer of a municipal entity on a competitive basis[61]. In accordance with the previous regulation only the position of the chairman of a local administration could be taken on a competitive basis, whereas the chief of a municipal entity could either be elected by the local population (in which case he could either be the chairman of a representative body or the chairman of a local administration) or appointed by a representative body of a municipal entity from its own membership (in which case he could only hold the position of the chairman of a representative body). Another amendment is related to the latter. Whereas the chief of a municipal entity appointed by a representative body could previously only be the chairman of this body, presently the chief of a municipal entity appointed by a representative body can either be the chairman of this body or the chairman of a local administration. Furthermore, if he takes office as the chairman of a local administration, he is to lose any authority as a deputy.

The increasing regulatory influence of the constituent entities (states) of the Russian Federation on the institutional structure of the municipal entity is also closely related to the stated above. Under the previous regulation the formation procedure, authorities, the term of office, accountability, subordination and other matters per-

---

[59] Constitutional Law: Russia. *ERPL/REDP*, vol. 27, no 2, summer/été 2015. P. 918-919.

[60] The municipal entity is a general category that includes different types of municipal formations existing in the Russian Federation: a settlement (rural or urban); a municipal district (it unites (consolidates) settlements); an urban district (urban district with inner-city municipalities); an inner-city municipality (it is included in an urban district with inner-city municipalities); inner-city municipalities of a city with federal status (Moscow, St. Petersburg, Sevastopol).

[61] Federal Law of February 3, 2015 No. 8-FZ.

taining to local self-government bodies' formation and functioning were constituted by the municipal charter which was to comply with the federal law establishing the general principles of constituting local self-government in the Russian Federation[62]. At present, the constituent entities of the Russian Federation are entitled to specify the norms of a general provision of the federal law mentioned above with its own laws that are mandatory for municipal entities placed within the territory of a constituent entity of the Russian Federation[63]. In particular, Article 34 of the Federal Law on Local Self-Government (as amended) states that the matters of local self-government bodies' formation and functioning mentioned above are constituted by the municipal charter in compliance with a law of a constituent entity of the Russian Federation. In furtherance of this general provision, Articles 35, 36 and 40 of the Federal Law on Local Self-Government stipulate that the procedure of forming a representative body and taking office as the chief of a municipal entity, or the terms of authority for deputies and other elective officials are laid down by the municipal charter in compliance with a law of a constituent entity of the Russian Federation. The previous version of the Federal Law on Local Self-Government left matters of local self-government bodies' formation and functioning to the discretion of municipal entities and did not specify a law of a constituent entity of the Russian Federation as a legal means of regulating them.

Therefore, actual federal regulation on local self-government implies the possibility of a constituent entity of the Russian Federation to determine the approach of forming a municipal entity's bodies in terms of a single option without any alternatives. For instance, it could lead to a representative body of a municipal district not being elected, but composed of chiefs and deputies of settlements within the territory of such municipal district; moreover, it might be determined that the post of the chief of a municipal entity could only be

---

[62] Federal Law on General Principles of Constituting the Local Self-Government in the Russian Federation of October 6, 2003 No. 131-FZ (hereinafter - Federal Law on Local Self-Government).

[63] Federal Law of May 27, 2014 No. 163-FZ; Federal Law of February 3, 2015 No. 8-FZ; Federal Law of June 29, 2015 No. 187-FZ.

occupied on a competitive basis. This legal approach, on the one hand, could be treated as an aspiration of the federal legislator for unification providing effective local self-government; on the other hand, this regulatory influence on the institutional system of municipal entities, which is vast and substantial, affects such an important feature of local self-government as its autonomy. Furthermore, it makes it entirely possible for persons lacking the necessary democracy legitimation to become members of a municipal entity's representative body.

The amendments described above were the subject of a judicial review. Although the Constitutional Court of the Russian Federation came to the conclusion that the revised provisions of the Federal Law on Local Self-Government are constitutionally valid, it pronounced several legally significant specifications. In particular, the Constitutional Court noted that the new approach concerning the matter of institutional structure of a municipal district does not imply an opportunity for a representative body to be composed from chiefs of settlements, within the territory of such municipal district, that are appointed on the basis of a competitive procedure as far as it does not comply with the constitutional requirement for a member of a representative body to be democratically legitimized[64].

Moreover, the Constitutional Court has assessed these norms in light of a local self-government autonomy principle. In particular, it pointed out: "Even if the Constitution of the Russian Federation establishes the principle of local self-government autonomy as a general provision, this autonomy is not absolute and does not deny different forms of cooperation between local self-government bodies and state bodies, but it does prohibit state bodies from decisively participating in forming local self-government bodies… Thus the federal legislator is entitled to grant to a constituent entity of the Russian Federation a right to determine an order of forming local self-government bodies in its law but it must be done with the guarantee that the principle of local self-government autonomy will not

[64] The operative part of the Judgment of the Constitutional Court of the Russian Federation of December 1, 2015 No. 30-P.

be breached"[65]. Meanwhile, this legal reasoning should be treated as "*obiter dictum*", as far as the operative part of the Judgment does not make it a decisive factor. In this regard, the dissenting opinion of Justice Alexander Kokotov is of great interest. He convincingly points out that the Court ought to have paid more attention to the principle of local self-government autonomy, but the amendments give a reasonable ground to suppose that this autonomy itself has been injured[66].

---

[65] Paragraphs 2.1 and 2.3 of the Judgment of the Constitutional Court of the Russian Federation of December 1, 2015 No. 30-P.

[66] See the dissenting opinion of Justice Kokotov to the Judgment of the Constitutional Court of December 1, 2015 No. 30-P: "The federal legislation requirements on the structure of local self-governments as well as the basic and mandatory elements of this structure established in the federal legislation do not violate the citizens' right to determine (constitute) the structure of local governments independently; moreover, if the federal legislation contains different institutional models of local self-government, one of which can be independently chosen by local population, it brings legal certainty. At the same time, if the necessary legislature guarantees are established - that exclude the violation of citizens' constitutional rights in the sphere of local self-government, including the right to determine the structure of local governments independently, by the constituent entities of the Russian Federation - the Russian Federation has the right to delegate some of its authorities to the constituent entities of the Russian Federation. Meanwhile, it is obvious that the federal legislator, delegating an authority to determine the institutional structure of a local self-government to the constituent entities of the Russian Federation, did not provide this delegation with adequate guarantees that protect citizens' constitutional rights to determine the structure of local governments independently. … The main thing is that the particular institutional model of a municipal entity must be opted by local communities; whereas the diversity of regional models of municipal entities' institutional organization complies with the general principles of constituting the local self-government established in the federal law... In this view the provisions of part 2 of Article 36 of the Federal Law 'On general principles of local self-government in the Russian Federation' substantially limit citizens' constitutional right to determine the structure of local government and do not comply with Articles 12, 130 and 131 (part 1) of the Constitution".

As a summary we should note that the actual regulation on local self-government might provide it with some effectiveness but it does not definitely open it up to population as it was announced in the President's message to the Federal Assembly in 2013[67].

CONSTITUTIONAL AND INTERNATIONAL LAW

A New Approach to Jurisdictional Immunity of a Foreign State

The regulation on jurisdictional immunity of a foreign state has not been unified for a long time. Article 401 of the Civil Procedure Code (in its previous revision) established that "filing a claim against a foreign state in a court of the Russian Federation, drawing of a foreign state to participation in a case in the capacity of the defendant… putting the property of a foreign state situated on the territory of the Russian Federation under arrest… as well as turning an exaction onto this property by way of execution of the court decisions shall be admissible only with the consent of the competent bodies of the corresponding state"; whereas Article 251 of the Arbitration Procedure Code (in its previous revision) established that "a foreign state, coming forward in the capacity of the carrier of power, shall enjoy legal immunity with respect to a claim presented to it in an arbitration court in the Russian Federation…". In this regard, it is just to say that the civil procedure was based on the absolute theory of state immunity, whilst the arbitration procedure had its grounds in the theory of restrictive state immunity. At the same time, arbitration courts were showing a restrained approach to the interpretation of this provision and mostly refused to exercise jurisdiction over a foreign state[68]. Therefore, it allows to make a general conclusion that the absolute state immunity is the approach having been in existence in Russian judiciary for a long time.

---

[67] http://en.kremlin.ru/events/president/news/19825

[68] Informational Letter of the Supreme Arbitration Court of January 18, 2001 No. 58; Decision of the Supreme Arbitration Court of March 24, 2014 No. VAS-1602/14.

To give consistency to the issue of jurisdictional immunity of foreign states[69], the Parliament (the Federal Assembly) passed the Federal Law On Jurisdictional Immunity of a Foreign State and Property of a Foreign State in the Russian Federation, of November 3, 2015 No. 297-FZ[70]. This act mainly repeats the provisions of the UN Convention on Jurisdictional Immunities of States and Their Property, which was signed, but has not been ratified by the Russian Federation until now. Nevertheless, the Law sets forth several provisions, which are worth pointing out, not reflected in the Convention. For instance, the Law does not give a definition of a commercial transaction that is basic in terms of the Conventional regulation; it operates this wording but does not define it. Instead, the Law uses the definition of sovereign authorities as a criterion to define whether a foreign state has a jurisdictional immunity or not. Moreover, Article 10 of the Convention is only applicable to commercial contracts, whereas Article 7 of the Law establishes that jurisdictional immunity of a foreign state is not applicable both in case of commercial contracts and in case of business activity in

---

[69] Still one more reason for amendments is to be mentioned. Many commentators note that the real reason is the fact that foreign states mostly do not provide the Russian Federation with the same level of jurisdictional immunity as the Russian Federation does. Moreover, the reciprocity principle - at least in accordance with foreign states' judicial practice - does not oblige a national court to restrain from executing its authorities even if a foreign state as a defendant provides the state where the case is heard with a higher level of jurisdictional immunity than this state enjoys. One of the most prominent examples of this is the long-lasted litigation between Russia and Swiss company Noga (see *Debt Relief and Beyond: Lessons Learned and Challenges Ahead*. Ed. by CARLOS A. PRIMO BRAGA / DÖRTE DÖMELAND. Washington, D.C.: The World Bank, 2009. P. 270).

[70] In order to properly execute Federal Law No. 297-FZ, the Parliament (the Federal Assembly) passed the Federal Law of December 29, 2015 that amended litigation legislation. In particular, the Civil Procedure and Arbitration Procedure Codes were supplemented by Chapters 45.1 and 33.1, respectively, and there were introduced a number of amendments to the Federal Law On Enforcement Proceedings, as well as a new Chapter, 12.1, which together regulate the litigation involving a foreign state.

general. Speaking about the differences, it should also be noted that the procedure codes set forth a different term after which - from the moment when the foreign state receives a copy of documents certifying initiation of proceedings against it - a default judgment can be issued. Unlike a period of four months stipulated in the Convention, here a period of six months is prescribed, with the deadline for submission of the application to set aside a default judgment being reduced to two months.

The signing of the Convention by the Russian Federation and the fact that the law mentioned above reproduces the provisions of the Convention allow us to state that the regulation on jurisdictional immunity of a foreign state tends to implement the concept of restrictive state immunity. However, the Law clearly specifies that the application of restrictive immunity is to be based on the principles of reciprocity[71].

[71] The Civil Procedure and Arbitration Procedure Codes establish (Articles 417.9 and 256.9, respectively) that the court on its own initiative or upon a motion of a party may apply the principle of reciprocity, if it is determined that the amount of jurisdictional immunities granted to the Russian Federation in a foreign country does not meet the terms of the jurisdictional immunities granted to the foreign state in accordance with the Russian legislation. The ratio of jurisdictional immunities is determined by the court on the basis of the evidence submitted by the parties, and reports from governmental authorities. In this regard Federal Law On Jurisdictional Immunity of a Foreign State and Property of a Foreign State in the Russian Federation of November 3, 2015 No. 297-FZ establishes that the federal state body responsible for the development and implementation of state policy in the sphere of international relations (the Ministry of Foreign Affairs), in the manner prescribed by procedural legislation, gives opinions on issues of jurisdictional immunities of the Russian Federation and its property in a foreign state.

Constitutional Economics: Regional Economic Integration Development

On January 1, 2015 the Treaty on the Eurasian Economic Union[72] (hereinafter - the Treaty, the Union) came into force and took the so-called Eurasian integration project to a new level characterized by intensity and profundity. The Union is an international organization of regional economic integration having an international legal personality. It includes the Customs Union and the Common Economic Space that are not legal subjects (personalities) and similar in some sense to the so-called pillars of the EU (before it was reformed under the Lisbon Treaty). The Union aims to develop a common market of goods, services, capital and labor, to harmonize the Member States' national legislation, and to establish the integration infrastructure.

The functioning of the Union's bodies is determined by the provisions of Section III of the Treaty and Annexes 1 and 2 thereto. The Union's institutional structure includes the Supreme Eurasian Economic Council (the Supreme Council), the Eurasian Intergovernmental Council (the Intergovernmental Council), the Eurasian Economic Commission (the Commission) and the Court of the Union (the Court). The Supreme Council is composed of the Heads of the Member States and must be in session at least one time a year; its general authorities are defined as considering the main issues of the Union's activities, determining the strategy, directions and prospects of the integration and making decisions aimed at implementing the objectives of the Union. The Intergovernmental Council is composed of the Heads of the Governments of the Member States and must be in session at least two times a year; its general authorities concern the supervision of the Eurasian integration and the management of the Commission. The Commission is a permanent body providing for the current functioning and development of the Union and consisting of a Council and a Board. The Court is a judicial body providing for the uniform application of the Union's Law

[72] http://www.un.org/en/ga/sixth/70/docs/treaty_on_eeu.pdf

by the Member States and the Union's bodies; it is a panel of judges, two from each Member State.

The Law of the Union consists of the Treaty, international treaties within the Union, international treaties of the Union with a third party, decisions and dispositions of the Supreme Council, the Intergovernmental Council, and the Commission adopted within their authorities. Due to the Treaty coming into force, the significant part of international agreements signed at the previous stages of the Eurasian integration were terminated. Meanwhile, their provisions were incorporated into the Treaty, such as Annex 6 (Protocol on Common Customs Tariff Regulation) or Annex 7 (Protocol on Non-Tariff Regulatory Measures in Relation to Third Countries). At the same time, until the Customs Code of the Eurasian Economic Union is prepared and signed, the Treaty on the Customs Code of the Customs Union of November 27, 2009 retains its legal validity in accordance with paragraph 1 of Article 101 of the Treaty on the Eurasian Economic Union.

The Treaty guarantees both the freedom of movement of goods and the freedom of movement of services, capital and labor within the Union. Moreover, it ensures a coordinated, coherent and unified policy in the spheres of economics specified by the Treaty and other international agreements within the Union. The Member States are also obliged to establish the principle of equality between aliens and nationals in several spheres, such as trade in services. Besides these, the Member States agreed to gradually form and establish a common energy market (2025), a common market of medical products, a coherent agricultural policy, and a supranational body on financial market regulation (2025). The activity of the common labor market is expected to be unified by canceling the requirement for foreigners (from the Member States) to get a work permit, mutual recognition of diplomas, collection of income tax at an internal rate, and granting foreigners (from the Member States) social security under the principle of equality between aliens and nationals.

Thus, the Union is actively developing and extending. For instance, Armenia and Kyrgyzstan adhered to the Union in 2015. In the same year the Treaty on the Free Trade Area was signed by the

Union and Vietnam, and Syria announced its desire to adhere to the Union. Several supranational bodies are supposed to be established within the Union (the Foundation for Economic and Scientific Co-operation, the International Investment Bank of the Union, the International Arbitral Tribunal of the Union, and the Commission on Monetary Policy). The common currency is another issue for a wide and tough discussion.

Russian Legal System and European Human Rights Law

The abovementioned controversy between the Russian Constitutional Court and the European Court of Human Rights, however, does not mean that every single event in the relations between Russia and Strasbourg should be necessarily considered against this, mostly political, background. The European Court remains the 'court of last resort' for those who consider their Convention rights and freedoms to be violated by a Member State. So the Court carried on with its 'daily routine', protecting and promoting human rights in resolving particular cases and a wide spectrum of issues raised in the applicants' complaints in respect of Russia was covered in 2015.

Some cases reflected important and memorable events in the recent Russian history. Such was, for example, the Beslan tragedy case (see *Tagayeva v. Russia* (dec.), nos. 26562/07, 14755/08, 49339/08, 49380/08, 51313/08, 21294/11, and 37096/11, 9 June 2015) which originated in seven applications, brought by 447 applicants in the aftermath of the terrorist attack at a school in Beslan in September 2004. Referring to Article 2 of the Convention the applicants alleged that the State has failed in its obligation to protect the victims from the known risk to their lives, they also claimed that the hostage rescue operation as well as the investigation into the tragedy were ineffective. Some applicants also invoked several other Articles (3, 6, 8, 10 and 13). The Court so far has rendered a decision in which certain persons were struck out of the list of applicants, and certain applications and complaints were declared inadmissible. However, the remaining applicants' complaints under Articles 2 and 13 of the Convention were declared admissible with-

out prejudging the merits and a judgment on these admissible complaints will be delivered at a later stage. Hence the full stop in this case is yet to be placed later.

Among the notable cases should also be enlisted the "March of Millions" demonstration case (see *Kovyazin and Others v. Russia*, nos. 13008/13, 60882/12 and 53390/13, 17 September 2015), which concerned the applicants' arrest and pre-trial detention following their participation in a demonstration on 6 May 2012 to protest against allegedly rigged presidential elections. The applicants complained, *inter alia*, of the lengthy pre-trial detention and the domestic courts' refusals to opt for alternative preventive measures, notwithstanding the applicants' personal circumstances: no criminal record, fixed places of residence, stable family backgrounds. The Court found that the domestic courts extended the applicants' detention on grounds which cannot be regarded as relevant and sufficient in order to justify its length. Thus, the domestic courts did not avoid their familiar practice to infer the risks of absconding, reoffending or interfering with the proceedings essentially from the gravity of charges together with a failure to address specific counterbalancing facts or to consider alternative preventive measures. A violation of Article 5 § 3 of the Convention is a rather predictable outcome for this case, regardless of its public or political value.

Other cases gained their significance irrespective of their high profile, connection with some events, places or persons but, for instance, due to the practical significance of the issues addressed in them.

It is not in dispute that those seeking to bring their case against a State before an international judicial or arbitral organ, must have clear guidelines how to comply with all possible requirements in order to lodge an admissible complaint. That is why procedural issues and issues of admissibility are among the most important. Some of the core admissibility rules arise from the principle of subsidiarity which in practice means that the Strasbourg Court should primarily be a supervisory last resort and the main burden of securing, protecting and enforcing human rights should lie on domestic

authorities who are in the best position to do so[73]. As Article 35 § 1 of the Convention stipulates:

> "1. The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken."

Here the two admissibility requirements - the exhaustion of an effective remedy and the observance of the six-month period - are closely interrelated, so that timely recourse to the remedies provided by the national legal system is seen as the first and necessary prerequisite for applying to an international body. The rule is based on the assumption, reflected in Article 13 of the Convention, that there is an effective remedy available in respect of the alleged violation[74]. Consequently, at this point the whole matter is closely connected with the respective national rules of procedure.

In the recent years the Russian procedural legislation underwent a number of modernizations. Among them there were the legislative amendments reforming the Russian civil procedure with effect from 1 January 2012[75]. The amendments introduced the two-tier cassation appeal procedure before presidia of regional courts and the Supreme Court in civil cases, the so-called 'new cassation' stage.

According to the consistent approach, based on the obsolete procedural legislation, as the ultimate judicial remedy to be exhausted prior to lodging an application with the Court, was considered an (ordinary) appeal to a regional court. The applicants, consequently, were not required to submit their cases for further re-examination by higher courts as the subsequent supervisory review stages were qualified as extraordinary and ineffective, akin to 'similar remedies

---

[73] REID K., *A Practitioner's Guide to the European Convention on Human Rights*, 4th Ed. London: Sweet Maxwell, 2012. P. 31.

[74] See, *e.g.*: *Akdivar and Others v. Turkey*, 16 September 1996, *Reports* 1996-IV, p. 1214, § 65.

[75] See Federal Law No. 353-FZ of December 9, 2010 "On Amendments to the Code of Civil Procedure of the Russian Federation" (in Russian), in: RG, No. 281, Dec. 13, 2010.

which should not normally be taken into consideration as a remedy under Article 35 § 1 of the Convention' on account of their uncertainty (see, *e.g.*: *Tumilovich v. Russia* (dec.), no. 47033/99, 22 June 1999; *Denisov v. Russia* (dec.), no. 33408/03, 6 May 2004).

In the decision in the case of *Abramyan and Others v. Russia* (dec.) (nos. 38951/13 and 59611/13, 12 May 2015) the Court reconsidered that approach. It ruled that under the amended legislation those who intended to lodge an application in respect of a violation of Convention rights should first use the remedies offered by the new cassation procedure, including a second cassation appeal to the Supreme Court of Russia. The new stage, accordingly, was recognized as an effective remedy, no longer aggravated by the previously existing uncertainty.

The matter was not at all straightforward, but it appears that the Court opted for strengthening the dialogue with the Russian judicial system, thus giving full effect to the subsidiarity principle. This gives the Russian higher courts, including the Supreme Court, an adequate opportunity to consider a complaint about an alleged violation of the Convention in civil cases and remedy any such violation before it goes to Strasbourg.

The procedural issues were also touched upon in the case of *Mikhaylova v. Russia* (no. 46998/08, 19 November 2015) where the Court examined national rules on administrative offense proceedings, and namely, the complaint concerning lack of free legal assistance in such proceedings.

The applicant, fined for failure to comply with a police order and for taking part in an unlawful public gathering, complained that she had not, and could not, benefit from free legal assistance as Russian law excluded this possibility in administrative offense cases. Her requests for free legal assistance were dismissed by the national courts on the grounds that the legislation governing administrative offenses contained no rule concerning provision of free legal assistance. The Russian Constitutional Court declared the applicant's complaint inadmissible although it encouraged the legislator to remedy legislative drawbacks in this respect.

The starting point for the Court's findings in this case was the classification of the administrative proceedings under consideration

to be "criminal" in nature within the meaning of Article 6, regard being had to the punitive and deterrent nature of (although relatively low) administrative fine. The Court also recalled that the right to free legal assistance under Article 6 § 3 of the Convention was subject to two conditions, namely lack of means and the "interests of justice". And then, since the right of everyone charged with a criminal offense to be effectively defended by a lawyer, albeit is not absolute, belongs to one of the fundamental features of a fair trial, and given the circumstances of the particular case, the Court found that the applicant should have been provided with free legal assistance.

Several notable judgments in respect of Russia delivered in 2015 involved different issues under Article 8 of the Convention - the provision which in the past decades became the subject of the Court's extensive jurisprudence. The four interests, protected by Article 8 - private life, family life, home and correspondence - embrace a considerable variety of matters (with stable trend towards broadening this ambit). These closely connected matters and interests come into interplay with one another and sometimes overlap so that the line of demarcation between them may not always be clear-cut.

Private life and family life are apparently the closest. Both were the focus of another Grand Chamber judgment under Article 8 which concerned a life prisoner's complaint as to restrictions on family visits during ten years of his detention in a special regime correctional colony.

If we recall, the Court traditionally pays considerable attention to prisoners' Article 8 rights. The Convention 'cannot stop at the prison gate'[76], and a prisoner does not automatically forfeit his Convention rights, including the right to respect for private and family life[77].

Thus, the Court has consistently held in its case-law that any detention, being a measure connected with deprivation of liberty, entails by its nature a limitation on private and family life. However,

---

[76] See *Hirst v. the United Kingdom (no. 2)* [GC], cited above, § 70.

[77] See *Ploski v. Poland*, no. 26761/95, 12 November 2002, §§ 32, 35.

it is an essential part of a prisoner's right to respect for family life that the prison authorities assist him in maintaining contact with his close family[78]. The Court has applied this approach in a number of Russian cases. Among the well-known authorities the judgment in *Khodorkovskiy and Lebedev v. Russia* (nos. 11082/06 and 13772/05, 25 July 2013, § 850), where the absence of a clear and foreseeable method of distribution of convicts amongst penal colonies was found in breach with Article 8 as allowing public authorities to transfer detainees to very remote colonies situated thousands of kilometers from their homes without any plausible justification.

In the new Grand Chamber judgment in the case of *Khoroshenko v. Russia* the Court held that prison regime allowing only short-term family visits twice a year over a ten-year period violated the prisoner's right to family life[79]. Although "in accordance with the law", the measure was found disproportionate to the aims pursued as such a strict regime seriously complicated a prisoner's social re-integration and rehabilitation.

Another noteworthy judgment under Article 8 concerned the inflexibility of Russian family law which results in complete and automatic exclusion of non-biological father from child's life in case of termination of the paternity irrespective of a close emotional link which had developed over a number of years between the applicant and his child who believed themselves to be father and

---

[78] See *Messina v. Italy (no. 2)*, no. 25498/94, ECHR 2000-X, § 61; *Öcalan v. Turkey (no. 2)*, nos. 24069/03, 197/04, 6201/06 and 10464/07, 18 March 2014, § 154. However, in *Messina v. Italy (No. 2)* the Court found that the restrictions on the number of family visits (not more than two per month) and measures for the supervision of such visits (prisoners were separated from visitors by a glass partition), imposed on a Mafia prisoner, were justified in the light of the security considerations, regard being had to the specific nature of the Mafia type organization, in which family relations often play a crucial role. It follows that the Court's approach is flexible: it is prepared to take into account particular circumstances of the case and awaits the same attitude of the States in respect of their prisoners. Consequently, it finds violation where such restrictions are arbitrarily applied or there is no individual regulation.

[79] *Khoroshenko v. Russia* [GC], no. 41418/04, ECHR 2015.

daughter. In the case of *Nazarenko v. Russia* (no. 39438/13, 16 July 2015) the Court has dealt with this problem. A violation of the right to respect for private and family life stemmed, in the Court's view, from the State's failure to examine on a case-by-case basis whether it was in a child's best interests to maintain contact with a person, whether biologically related or not.

Probably the most prominent and important among the decisions and judgments under Article 8 is the judgment in the case of *Roman Zakharov v. Russia* (no. 47143/06 [GC], 4 December 2015), where the Court examined Russian legislation on investigative activities. An application was lodged under Article 34 by a head of a non-government organization that monitors media freedom in the city of Saint Petersburg.

As a background to the case it should be noted that in 2003 the applicant unsuccessfully sued his mobile network operators, accusing them of providing information about his telephone conversations to unauthorized government agents and requesting that the telecom companies remove surveillance equipment installed under the special legislation.

The domestic authorities took a stance that the applicant failed to prove that *his* telephone conversations had been intercepted or that protected information had been *in fact* transmitted by the providers.

Accordingly, as the first step, the Strasbourg judges dismissed the Government's objections to the effect that the matter represents *actio popularis* and confirmed the applicant's victim status. They noted that the contested legislation instituted a system of secret surveillance under which *any person* using mobile telephone services of Russian providers could have his or her mobile telephone communications intercepted, without ever being notified of the surveillance, and concluded that, accordingly, this legislation directly affected all users of these mobile telephone services. The issue was joined to the merits due to its close link to the substance of the applicant's complaint.

Having thoroughly scrutinized the domestic legal provisions governing the interception of communications, the Court found that they did not meet the "quality of law" requirement and were incapa-

ble of ensuring that secret surveillance measures be ordered only when "necessary in a democratic society".

In one of its conclusive remarks the Court attached a particular weight to the fact that the domestic law permitted "automatic storage of clearly irrelevant data" and was "not sufficiently clear as to the circumstances in which the intercept material would be stored and destroyed…".

The Russian authorities responded by strengthening the national legislation. At the end of June 2016 the new harsh anti-terrorist draft law was adopted. And whereas formerly, the interception of communications could be authorized in connection with criminal suspicion or criminal proceedings[80], the new law obliges telephone and Internet providers, among other things, to store records of *all communications* (irrespective of any connection with criminal suspicion or investigation) for six months and all metadata for three years and to provide access to that data to the State agencies "in accordance with the law".

The famous whistleblower Edward Snowden already reacted having called the "Big Brother law" an "unworkable, unjustifiable violation of rights" that would "take money and liberty from every Russian without improving safety"[81].

ABSTRACTS / RÉSUMÉS

The chronicle reviews the development of Russian constitutional law in 2015. The amendments to Russian constitutional law cover most of its basic institutions such as constitutional review, legislature, administration, elections, constitutional rights and the system of their protection, local self-government etc. Some of the amendments are substantial; others are ordinary. Nevertheless, the most significant amendment of the constitutional law is undoubtedly the extension of the Russian Constitutional

[80] Namely, only in cases where a person was suspected of, or charged with, a criminal offense of medium severity, a serious offense or an especially serious criminal offense, or at least might have information about such an offense.

[81] *The Guardian* (https://www.theguardian.com/world/2016/jun/26/russia-passes-big-brother-anti-terror-laws).

Court's competence concerning its authority to rule on whether the decision of an international jurisdictional body on human rights protection complies with the Russian constitutional legal order and shall therefore be executed. Although this is the most important event of the Russian constitutional development, there are others - including the State Duma elections and local self-government development - which are discussed in this chronicle.

La chronique passe en revue l'évolution du droit constitutionnel russe en 2015. Les modifications apportées au droit constitutionnel russe couvrent la plupart de ses institutions fondamentales, telles que le contrôle constitutionnel, la législature, l'administration, les élections, les droits constitutionnels et le système de leur protection, l'autogouvernement local, etc. Certaines de ces modifications sont substantielles, d'autres sont moins significatives. Cependant, la modification la plus importante du droit constitutionnel est sans aucun doute l'extension de la compétence de la Cour constitutionnelle russe, qui peut décider si l'arrêt d'un organe juridictionnel international sur la protection des droits de l'homme est conforme à l'ordre juridique constitutionnel russe et doit donc être exécuté. Bien que cela soit le fait le plus important de l'évolution constitutionnelle russe, il y en a d'autres, y compris les élections à la Douma et le développement de l'autogouvernement local, qui sont discutés dans la chronique.

F. Vogin