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ТРАНСФОРМАЦИЯ ПОЗИЦИИ КОНСТИТУЦИОННОГО СУДА ОТНОСИТЕЛЬНО ВОЗМОЖНОСТИ ИСПОЛНЕНИЯ В РОССИИ РЕШЕНИЙ МЕЖДУНАРОДНЫХ И ЗАРУБЕЖНЫХ СУДОВ

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Аннотация

Трансформация позиции Конституционного Суда РФ по вопросу возможности исполнения решений международных и зарубежных судебных органов крайне актуальна и одновременно с этим закономерна. Признающая себя частью международного сообщества Россия стремится добросовестно исполнять взятые на себя международные обязательства, в том числе и по признанию и исполнению соответствующих судебных актов, принятых вне ее юрисдикции. Однако наличие отдельных противоречий, причем весьма существенных, порождает необходимость во многих случаях задаваться вопросом о том, допустимо ли те или иные акты признавать и приводить в исполнение на своей территории. Конституционный Суд РФ, играющий зачастую определяющую роль в решении рассматриваемой проблемы, демонстрирует достаточно устойчивую тенденцию изменения взглядов на акты международных и зарубежных судебных органов с позиции их исполнения. И если раньше изменение его позиции могло быть как-то поставлено под вопрос, то в настоящее время в результате конституционной реформы 2020 г. позиции указанного органа укрепились, особенно в связи с расширением полномочий. Но очевидной

остается проблема пересмотра Конституционным Судом РФ ранее сформулированных позиций. На это обращено основное внимание автора.

Ключевые слова: исполнение решения зарубежного суда, конституционное правосудие, Конституционный Суд РФ, позиция Конституционного Суда РФ, решения зарубежных судов

Original article

TRANSFORMATION OF THE POSITION OF THE CONSTITUTIONAL COURT REGARDING THE POSSIBILITY OF ENFORCEMENT IN RUSSIA OF DECISIONS OF INTERNATIONAL AND FOREIGN COURTS

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Abstract

The transformation of the position of the Constitutional Court of the Russian Federation on the issue of the possibility of executing decisions of international and foreign judicial bodies is extremely relevant and at the same time logical. Recognizing itself as a part of the international community, Russia strives to faithfully fulfill its international obligations, including the recognition and enforcement of relevant judicial acts adopted outside its jurisdiction. However, the existence of certain contradictions, and very significant ones, makes it necessary in many cases to ask whether certain acts are acceptable to recognize and enforce on their territory. The Constitutional Court of the Russian Federation, which often plays a decisive role in solving the problem under consideration, demonstrates a fairly stable trend of changing views on acts of international and foreign judicial bodies from the perspective of their execution. And if earlier a change in its position could somehow be called into question, now, as a result of the constitutional reform of 2020, the position of this body has strengthened, especially in connection with the expansion of powers. But the

problem of reviewing the previously formulated positions by the Constitutional Court of the Russian Federation remains obvious. This is the main focus of the author.

Keywords: enforcement of a foreign court decision, constitutional justice, Constitutional Court of the Russian Federation, position of the Constitutional Court of the Russian Federation, decisions of foreign courts

Introduction

The issue of enforcement of foreign court decisions by the Russian Federation is now more acute than ever, since, on the one hand, the current situation is characterized by the existence of a conflict between Russia and the so-called collective West, which does not allow for full legal cooperation with many Western states, including through the enforcement of relevant court decisions of certain countries. On the other hand, Russia still remains the most important subject of the world community, while recognizing international law and strictly observing the norms of treaties concluded with many countries.

In these circumstances, the policy of enforcement of foreign court decisions requires an extremely balanced approach. The Constitutional Court of the Russian Federation has played a key role in its formation in recent years, and its position has significantly changed, which cannot be ignored.

The main part

46 of the Constitution of the Russian Federation guaranteed by Part 3 [1] the right of a citizen to apply to international bodies for the protection of human and civil rights and freedoms in cases where domestic institutions have exhausted their capabilities and have not brought the expected result. This opportunity, while significantly expanding the resources of justice, also contributes to strengthening its authority.

However, in practice, international bodies do not always deal with judicial issues with the proper level of impartiality, without political background, showing due respect for a particular country that is a party to the dispute. And this circumstance. It gives

certain grounds to question the legitimacy of many decisions of the relevant international bodies. A similar problem exists with decisions made by foreign courts, which also often do not fully respect the national law of another country, including Russia. Hence the need to assess the constitutionality of such decisions.

Moreover, the main problem is not always the contradictions between Russian law and the positions expressed in international or foreign judicial acts. Often, contradictions are also seen in acts of the Constitutional Court of the Russian Federation adopted on the same issue, or on identical issues, but in different periods of time.

It is generally accepted that a steady trend towards changing the position of the Constitutional Court has been outlined since 2010, when in the case of *Citizen Markin v. the Russian Federation*, considered in the ECHR, a number of violations on the part of Russia were recognized. However, the corresponding decision of the ECHR came into conflict with the positions of the Constitutional Court of the Russian Federation, and the European Court did not take this aspect into account. Further, on 14.07.2015, the Constitutional Court of the Russian Federation adopted Resolution No. 21-P [5], which actually became the basis for implementing the "non-enforcement mechanism" of ECtHR decisions [8, p.79].

A fairly clear example of the transformation of the Constitutional Court's position on this issue is its reassessment of its views on the essence and content of paragraph 1 of Article 23 of Federal Law No. 101-FZ of 15.07.1995 (as amended on 08.12.2020) "On International Treaties of the Russian Federation", which states that "an international treaty or part of a treaty may be applied by the Russian Federation before its entry into force. The Russian Federation temporarily, if this is provided for in the agreement or if an agreement has been reached with the parties that signed the agreement" [3].

Of course, in this case, there is no question of a specific court decision. However, any norm, in one way or another, is potentially the basis for a dispute, a court decision, and therefore this norm is directly related to the problem under consideration. And

assessing it for compliance with the Basic Law of the country in 2012, the Constitutional Control Committee recognized the absence of contradictions to the Constitution "in the part that allows temporary application until the entry into force of an international treaty (or part of an international treaty) of the Russian Federation, affecting the rights, freedoms and duties of a person and citizen and establishing other rules". At the same time, the position was reasoned by the fact that the specified norm in its constitutional and legal meaning in the system of current normative legal regulation does not imply the possibility of applying such an international treaty (or part of an international treaty) in the Russian Federation without its official publication [4].

Obviously, by recognizing this provision as permissible, the Constitutional Court also allowed the possibility of executing decisions of foreign and international courts based on не вступивших international treaties that have not entered into force on the territory of Russia, which in modern realities sounds extremely paradoxical.

However, in the Decision of the Constitutional Court of the Russian Federation No. 2867-O-R of 24.12.2020 " On Clarification of the Decision of the Constitutional Court of the Russian Federation No. 8-P of 27 March 2012 in the case on checking the constitutionality of paragraph 1 of Article 23 of the Federal Law "On International Treaties of the Russian Federation", the position expressed earlier was fundamentally revised and stated that application of the provisions of the international treaty of the Russian Federation, but specifically in relation to cases of settlement by international arbitration of disputes between the Russian Federation and foreign investors that have arisen in connection with their investment and business activities on the territory of the Russian Federation, even if this international treaty has been officially published, without the adoption of the federal law on its ratification [ACS No. 2867-O-P].

It is obvious that a decisive contribution to the transformation of the position of the Constitutional Court of the Russian Federation on this issue was made by the constitutional reform carried out in 2020, thanks to which this body significantly strengthened its position in the system of government bodies [8, p. 79], having received

a number of additional powers, including those related to the ability to resolve issues on the permissibility of executing international treaties and decisions of international and foreign judicial bodies on the territory of Russia: the addition of Article 125 of the Constitution of the Russian Federation by Part 5.1 convincingly testifies to this.

Of course, this measure was largely dictated by the objective need to create additional tools to protect the constitutional order and national interests, including to prevent interference in Russia's internal affairs by other countries, international organizations and bodies through legal instruments.

It seems that such significant changes in the position of the Constitutional Court of the Russian Federation would not have occurred in the absence of certain circumstances:

- first, a significant deterioration in relations with a number of Western states, which occurred gradually, but very clearly;

- secondly, the revision of the Constitution of the Russian Federation from the position of ensuring the protection of national interests and the constitutional order.

All this has set the Constitutional Court of the Russian Federation on a radical review of its policy towards foreign and international judicial bodies. And, as subsequent events showed, such a revision was necessary. Perhaps the need to reconsider the position arose earlier, but there were no weighty reasons for this.

It is also necessary to recognize the fact that for some time now there has been an urgent need to ensure the protection of traditional values in the conditions of the Russian legal order and deviation from such values in many foreign countries. This, too, could not but leave its mark on the practice of evaluating decisions of international and foreign courts, including the ECHR.

It is impossible not to pay attention to such problems as compliance with the principles of international courtesy and reciprocity in resolving issues related to the execution of decisions of international and foreign judicial authorities. These principles are generally regarded as an essential condition for international cooperation in various

fields, including in the field of justice. However, they have recently been called into question.

And here it is impossible not to pay attention to the presence of fundamental differences between reciprocity and politeness. If we talk about politeness, then it always means showing respect, recognition, but there is no question of bilateral mutual manifestation of appropriate behavior: it is possible, but not necessary. When it comes to reciprocity, it involves two-way, identical actions [7, pp. 165-166]. That is, in the case of enforcement of a court decision by the first country, the second country similarly executes the decision of the first court. In this case, there is a manifestation of politeness. However, politeness also applies when one country executes the decision of the court of the second country, but the second does not execute the decision of the court of the first country. The latter situation is highly undesirable, because there is no reciprocity, and politeness is shown only on one side. In particular, for this reason, it is often necessary to reconsider the position regarding the enforcement of decisions of foreign and international courts.

It is interesting that in the scientific literature, views on the issue of enforcement of decisions of international and foreign courts also tended to change dramatically. For example, in 2016, the authority of Russian court decisions abroad was noted [7, p. 168]. At the present time, it is difficult to talk about this, especially in relation to Western countries.

While recognizing the existence of a certain transformation in the position of the Constitutional Court regarding the possibility of executing decisions of international and foreign courts, it is impossible not to say that, in general, the Constitutional Court itself did not introduce anything new to the legal system, if we ignore judicial practice, because the current Russian legislation did not allow applying on the territory of Russia (may cause) damage to the sovereignty of Russia, threaten its security, or contradict the judicial procedure [2]. However, it is up to the Constitutional Court to determine how a particular decision of an international or foreign judicial body will be evaluated. In other words, the problem largely lies precisely in the legal assessment of a particular

decision from the point of view of the same legal norms aimed at protecting the constitutional order of Russia.

It is appropriate to recognize that having de jure revised its position on the possibility of executing decisions of foreign and foreign courts, Russia, nevertheless, has not deviated from its path in terms of development in accordance with international law, for which there are quite convincing arguments. First, as A. A. Kostin rightly emphasizes [9, p. 21], the court decision itself, whoever it is, does not have legal force outside the state on whose territory it is made, because the implementation of justice is a form of implementation of state power, and it is precisely within the state that it is made. This means that it generates only those consequences that the State of location itself allows, for example, the debtor. In other words, an international court or a foreign court is competent in its decisions only to the extent that it is allowed to do so by another country, in particular Russia. In other words, it is Russia that has the right to decide which foreign or international judicial acts to enforce on its territory and which not to enforce.

Here it is impossible not to mention such a mandatory condition for the recognition and execution of judicial acts as the existence of an international treaty, and it is precisely ratified, for which there is a very specific reason, namely, confidence in the foreign judicial system cannot be absolute. Therefore, additional barriers are needed to prevent many violations. And an international treaty, as well as respect for the principle of reciprocity, should contribute to this. At the present time, the principle of reciprocity in many cases is out of the question in a positive way.

Conclusion

Thus, the position of the Constitutional Court of the Russian Federation on the enforcement of decisions of international and foreign courts has undergone a very significant transformation, which was natural, and was mediated by quite objective reasons. And given the events of the last 10 years, it would hardly be appropriate to expect any other changes in the framework of the position under consideration. At the same time, a special role in the transformation of this position was played by the

constitutional reform of 2020, which we assess positively in terms of strengthening the tools of constitutional control.

At the same time, the stability, unambiguity, and indisputability of the opinions expressed by the Constitutional Court of the Russian Federation raises some questions, since certain positions are reviewed by them after some time. In this regard, it is necessary to develop some uniform approach to resolving disputes. Perhaps the relevant ideas should be expressed in the legislation on the Constitutional Court or in a special development concept that should be developed for this body of constitutional control, which is extremely important in modern conditions.

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