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**The poor record of enforcement of the ECtHR decisions in the
Russian Federation and incompatibility of the amended Russian
constitution with the article 46 of the ECHR**

Bachelor's thesis

Program HAJB, specialization European Union and International law

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Tallinn 2021

I hereby declare that I have compiled the thesis independently and all works, important standpoints and data by other authors have been properly referenced and the same paper has not been previously presented for grading.

The document length is 10,895..... words from the introduction to the end of conclusion.

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ABSTRACT

The Russian Federation is a member of the Council of Europe and is a signatory state of the European Convention on Human Rights (ECHR).

The article 46 of the ECHR imposes a legal obligation on the respondent state and describes, what measures and by whom they should be taken, if it is found that the state is not fulfilling its obligation and is not executing the judgement of the European Court of Human Rights (ECtHR).

The article 46 of the ECHR will be widely discussed in the thesis, especially after the certain amendments of the constitution of the Russian Federation, as it is important for examining and assessing the efficiency and proportionality of the measures indicated in the legislation, as well as outlining the level of its effectiveness in regards with the Russian Federation avoiding to fulfil its legal obligation derived from the article 46 of ECHR.

Furthermore, the author of the thesis will carry out comparative analysis, based on different sources and the reports of authoritative international organizations on this matter about the revision of constitution of Russian Federation, its relation to the international law and international bodies and will try to examine compatibility of two legislations: constitution of Russian Federation and ECHR and will assume the possible risks and consequences of non-proportional measures taken by the Council of Europe.

Keywords: ECHR, ECtHR, Russian Federation, the Venice Commission, incompatibility, the constitution of the Russian Federation, the Constitutional court of Russia

INTRODUCTION

The European Court of Human Rights (ECtHR) is the international court founded in 1959, which ensures that the basic rights and freedoms derived by the European Convention on Human Rights, which was adopted in 1950 by the Council of Europe¹, are protected and assured by the signatory states-47 members of the Council of Europe.

The main purpose of the Strasbourg Court is to determine whether a Member State complies with or violates the rights protected by the Convention. The ECtHR can only hear the case after the exhaustion of the all instances on the national level. Generally, ECtHR imposes two main species of obligations to the contracting parties: general and individual measures. Individual measures can be such as financial remedy to the individuals whose rights were violated, reopening of the case, release of the imprisoned person, the return of a property. As for the general measures, the concerned states have to modify and amend respective parts of their legislation for further prevention of the violation of the human rights.² Generally, contracting states in most cases fulfil and take individual measures but when it comes to amendment of the legislation, it is always problematic and states often struggle or avoid to act accordingly. However, mostly their sense of responsibility towards the international society and the measures taken by the Committee of Ministers ensure the enforceability of the judgements.

Regardless of the fact that the ways of the implementation of the ECHR in the national legislations are different, every state individually determines its status and place in the domestic law. Austria has granted the convention the status of constitutional law, which ensures the constitutional court of the state protects the rights and freedoms provided by the ECHR³. In some other countries, the convention is considered as the second highest form of the law after the constitutional law, in contrast with other states where the convention has a status of an ordinary law.⁴

¹ Busygina, I., Kahn, J. (2019). Russia, the Council of Europe, and “Ruxit,” or Why Non-Democratic Illiberal Regimes Join International Organizations. *Problems Of Post-Communism*, 67(1), 64.

² Issaeva, M., Sergeeva, I., Suchkova, M. (2011). Enforcement of the Judgments of the European Court of Human Rights in Russia. *SUR International Journal on Human Rights*, 8(15), 70.

³ Usenkov, I., Morozov, I. (2018). Enforceability of ECtHR Judgements in Russia: Alternatives of Interaction Between Jurisdictions. *SHS Web Of Conferences*, 50, 01192.2.

⁴ Kodra, L. (2017). THE RELATIONSHIP BETWEEN INTERNATIONAL LAW AND NATIONAL LAW. *Global Journal of Politics and Law Research*, 6(1), 1-11.

The different legal status of the Convention in the legislative system of the different member states, itself determines the specifics of the jurisdiction of the domestic courts.

According to the ruling of the Constitutional court of Russia of 2015(14.07.2015), as well as the amended articles 79 and 125 of the revised constitution of the Russian Federation, the decisions of interstate bodies contradicting the Constitution of Russian Federation, can be declared unenforceable, granting the Constitutional court of Russia power to decide so and if applicable overrule the judgements of the ECtHR in the name of protecting the constitution. Pursuant to the article 46, as Russia is a party to the convention, it has an international obligation to execute the judgements of the ECtHR.

Furthermore, according to article 46(5) of the ECHR, if a party violates and fails to execute the judgements of the ECtHR, the Committee of Ministers have to take measures.

The research hypothesis is that the amendments to the Russian Constitution and the rulings of the Constitutional court of Russia, giving itself the power to overrule and not to execute the judgements of the ECtHR, are incompatible with the article 46 of the ECHR, and non-proportional measures taken by the Council of Europe(including restoration of Russia's voting right by the Parliamentary Assembly of the Council of Europe(PACE)) against the abovementioned actions of the Russian Federation establish a dangerous precedent and jeopardizes the authority of the Council of Europe as a safeguard of the democracy in its member states.

The research aim is to outline the problems in the ECtHR judgement enforcement mechanism and to suggest the possible solutions for the purpose of increasing the leverage of the Council of Europe, to ensure the enforcement of the ECtHR judgements- therefore democratic development and impartial judiciary in the member states including Russia, as well as , to avoid the possible non-compliance of other member states with their international obligations as a result of non-proportional measures taken by the Council of Europe towards the Russian Federation.

For the abovementioned purposes, the qualitative research of the various academic sources will be carried out. The research will be based on the descriptive and explanatory analysis of the academic papers as well as the analysis of the opinions of the Venice Commission, about the revision of the Constitution of the Russian Federation, its relation to the international law and international bodies. Moreover, a comparative analysis of the academic papers, books and the journals regarding the specific relations of the different states and common practices of their Constitutional courts with the ECtHR and international law in general will be carried out, in the context of assessing the actions of the Constitutional court of Russia and comparing the status of the international law in the different domestic legislations, in order to check the compatibility between the amended

articles to the Constitution of Russia and Russia 's international obligation pursuant to the article 46 of the ECHR.

In order to get a better insight about the topic, the thesis will firstly outline the different approaches of the states towards the international law including the ECHR and to the international bodies in general. Subsequently the explanation of the mechanism of the enforceability of the ECtHR judgements will be presented. This will be followed by the discussion of the relationship between the Constitutional Court of the Russian Federation and the ECtHR outlining the main reasons of the confrontation between the two bodies and discussing important decisions of the ECtHR in this context. For the better understanding of the common practice, relations of the Constitutional courts of the other states of the Council of Europe with the ECtHR will be widely discussed in the paper as well as the analysis of the several opinions of the Venice Commission about the amendments of the articles 79 and 125 of the Constitution of the Russian Federation will be carried out for the purpose of assessing the legality and compatibility of the decisions of Russian authorities with the ECHR. Finally, the paper aims to conduct an evaluation of the possible reasons, as well as the risks and consequences of the non-sufficient measures taken by the Committee of Ministers against Russia and will propose the possible solutions to this complex issue in order to eradicate the incompatibility between the domestic legislation of Russia and its international legal obligations, taking into consideration the interests of the Russian citizens as well as the international reputation of the ECtHR and the Council of Europe.

The contribution of this bachelor thesis is following: Even though there is a consensus in the international society that measures have to be imposed on Russia for violating international obligations and norms, there is still a debate about the strictness and forms of these measures. The discussion in the thesis about the history of Russia-ECtHR relations, together with the analysis of practice of different states and their domestic courts in relation with the ECtHR judgements, explicitly shows the path Russian Federation chose since the year 2015 and outlines the effects of non-proportional measures taken by the Council of Europe so far, which instead of solving the problem caused even worse consequences and put the organization into danger of jeopardizing its reputation. The proposed measures in the thesis can be used for composing the strategy by the Council of Europe against the actions of Russian Federation.

1. Constitutions of States and international law

Generally, two approaches towards the international law exist: dualism and monism. According to the dualism approach, international and domestic laws are two separate and distinguishable legislations and in order to take effect, international law has to be implemented by domestic law. As for monist legal systems, international law and domestic law are two different components of one unified legislation and parts of the unified common system. Therefore, international law becomes the part of domestic legislation and is directly applicable.⁵ The incorporation clause found in the constitution of the state is a sign of states monist approach, as according to this clause, international law by becoming binding for that particular state, automatically becomes the part of its domestic legal order.⁶ Nevertheless, nowadays it is quite common that countries do not follow the either system and have a mixed approach of the both.⁷

According to the principle derived by the Vienna convention about the law of treaties, international law has a supremacy over the domestic law, in a sense that non-application of international law cannot be justified by referring to the domestic legislation, however when it comes to the international rule at the domestic level, it is a domestic law which implements international law in the state and prescribes its position in the law hierarchy, meaning there is no longer supremacy of international law, as the constitution is the supreme law of the state.⁸

The issue of determination of the position of international law in the law hierarchy of the states is controversial, as for example in monist legal systems despite of the fact that international law is directly applicable, its place in the hierarchy is not clear and it is not evident whether international law has a status of ordinary legislation, is above or below the ordinary legislation and its relation with the constitution is not explicit. It is not always prescribed in the law, but can be seen from the actions of the states derived by their political and judicial decisions.⁹

⁵ Barnard, M. (2015). Legal reception in the AU against the backdrop of the monist/dualist dichotomy. *The Comparative and International Law Journal of Southern Africa*, 48(1), 154-156.

⁶ Council of Europe. The Venice Commission. Study No. 690/2012. ON THE IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS TREATIES IN DOMESTIC LAW AND THE ROLE OF COURTS. 100th plenary session. 10-11 October 2014, 7.

⁷ Saunders, C. (2020). Constitutions and International Law. International IDEA Constitution Brief. *The International Institute for Democracy and Electoral Assistance*. Retrieved from <https://www.idea.int/sites/default/files/publications/constitutions-and-international-law.pdf>, 13 February 2021.

⁸ Kolb, R. (2018). Relationship between international and internal law. Retrieved from https://baripedia.org/wiki/Relationship_between_international_and_internal_law, 14 February 2021.

⁹ Petersen, N. (2012). Determining the Domestic Effect of International Law Through the Prism of Legitimacy. *Heidelberg Journal of International Law*, 72, 2-3.

However, monist countries tend to give an international law a rather higher status, whereas dualism approach preserves the sovereignty of the state, however it increases a chance of state violating international treaties.¹⁰

In the EU member countries, the EU law is supreme law of all the member states. Nevertheless, approach towards the other international treaties and legislations, including the ECHR is different and varies state to state.

In Germany, the treaties which determine the political relations of Germany, including the ECHR, need the ratification by the parliament and stand at the same level as the domestic legislation. In France it is not explicitly expressed which one takes precedence in case of conflict constitutional or international law. In Sweden, the ECHR has the status of ordinary legislation, where in case of the conflict Swedish law takes precedence, however the ECHR prevails when there is an evident incompliance. As for Switzerland, Switzerland is a monist system country, where in the most cases international law is given a precedence over the domestic legislation. However, it is not explicitly prescribed by the law, but it can be derived from the judgements of the Federal Supreme court of Switzerland.¹¹

As for the approaches towards the international human rights treaties, some states have explicit prescription about the hierarchy of human rights treaties, whereas in some states it can be deducted from the general relation of the domestic legislation towards the international law as a whole. In some cases, national legislations do not contain the clauses regulating this matter.¹²

1.1. The relationship between the domestic legislations and the ECHR in the Council of Europe member countries

The ECHR convention is a part of the public international law, and according to the court it has to be interpreted by the parties in accordance with the Vienna convention on international treaties. The execution of the ECtHR judgements is the obligation of all contracting parties.

¹⁰ *Ibid.*

¹¹ Bondolfi, S. (2018). Put national law before international law? Other countries do. Retrieved from <https://www.swissinfo.ch/eng/directdemocracy/controversy-in-parliament-put-national-law-before-international-law--other-countries-do-/44154932>, 14 February 2021.

¹² Velaers, J. (2016). Constitutional Versus International Protection of Human Rights: Added Value or Redundancy? The Belgian Case, in the Light of the Advisory Practice of the Venice Commission. *Revue interdisciplinaire d'études juridiques*, 2(2), 269.

Incorporation clause found in the article 15(4) of the Constitution of Russian Federation, states that international laws and treaties signed by Russia is a part of its legal system. Therefore, Russia can be considered as monist state.¹³

Moreover, it also states that in case of the contradiction of the domestic laws with the international treaty signed by Russia, the rules of latter has to be applied. However, this clause is somewhat vague, as it outlines the supremacy of the treaties over the domestic law but not necessarily over the constitution of Russia, which leaves the question of the supremacy between the constitution and international law unclear.¹⁴ In Germany the ECHR has a same status as other federal laws. In some countries like France and Belgium, before the ratification of the treaty the preliminary examination of its compatibility with the constitution is mandatory.¹⁵

To avoid the conflicts between the constitution and international law, some countries have preventive provisions in the constitution, for instance: the article 95(1) of the Constitution of Spain states that in case of the contradiction between the treaty and the constitution, without amending the constitution the treaty cannot be ratified¹⁶.

If the abovementioned preventive measures are not taken, states have two options: to harmonize the law while implementing the international treaty or to take more radical measures by disregarding one of the legislations domestic or international depending on their place in the law hierarchy.¹⁷

For instance, Romania chose the path of the harmonization as the article 20(1) of the Romanian constitution states that: “The constitutional provisions regarding the rights and freedoms of the citizens shall be interpreted and applied in accordance with the Universal Declaration of Human Rights, with the covenants and with the other treaties to which Romania is a party”¹⁸

1.2. The mechanism of enforceability of the judgements of the ECtHR

Article 46(1) of the ECHR imposes a legal obligation to the contracting parties to obey and execute the judgement of the court, in the cases concerned to them. Furthermore, following provisions of the same article define the procedure and the mechanism of the execution of the judgements of the

¹³ Bowring, B.(2018). Russia’s cases in the ECHR and the question of implementation. In: Mälksoo, L., Benedek, W. (Eds.), *Russia and the European Court of Human Rights the Strasbourg Effect*(188-221). Cambridge: Cambridge University Press,204.

¹⁴ Council of Europe, *supra nota* 6,12.

¹⁵*Ibid.*, 35.

¹⁶ The Spanish Constitution: Fundamental laws of the state. Madrid. 29 December,1972.

¹⁷ Council of Europe, *supra nota* 6,34.

¹⁸ Constitution of Romania. Bucharest.8 December 1991.

court, namely: instantly after the delivering of the judgement by the court, the judgement is transferred to the Committee of the ministers of Council of Europe, which is the political organ. The Committee of the Ministers supervises the process of execution of ECtHR judgements, whether or not and what measures were taken by the concerned states for the execution of the court's judgment, whether the legislation of the state was amended or not, for the purpose of preventing the further violations of the human rights protected by ECHR, whether the administrative practices, inconsistent with the standards of ECHR, were abolished and whether the compensation was given on time to the individuals whose rights were violated.¹⁹

Numerous reasons can hinder the execution of the court's judgements including: the issue of interpretation of the judgements, not sufficient efforts taken by the concerned state or states unwillingness to fulfil its obligation, as there is a difference between state refusing and unwilling to execute the judgment and state being unable to fulfill the obligation. If the concerned state is unable to execute the judgement for some reason, the other contracting states can assist and share their expertise.²⁰

In case of the interpretation issue, the Committee of Ministers with a majority of two thirds of the vote can refer the case back to the court for the purpose of interpreting the decision.

If the Committee of Ministers decide that the concerned state is unwilling to fulfil its legal obligation explicitly or through conduct,²¹ and does not execute the final judgment, according to the article 46(4) the infringement process starts, which again needs majority vote of two thirds. However, the issue is always complex, as in most cases states do not explicitly declare the unwillingness to execute the judgements and take insufficient and insignificant measures which serve the purpose of being exculpatory proof in front of the Committee of Ministers. There are two steps before the committee refers the case to the court: the formal notice to the party and adoption of the interim resolution which gives the state about 6 months to execute the judgment.

After the above-mentioned procedure if the state is still failing to fulfil its obligation, the Committee of ministers adopts the second interim resolution before referring the case to the court. The grand chamber of ECtHR consisting of 17 judges examines whether party has fulfilled its

¹⁹ Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements (adopted by the Committee of Ministers on 10 May 2006 at its 964th meeting and amended on 18 January 2017 at its 1275th meeting)

²⁰Bussararin Ericson, M. (2016). *The Execution of Judgements of the European Court of Human Rights*.(Masters's thesis) Uppsala University Department of Law,Uppsala,24.

²¹ Protocol No. 14bis to the Convention for the Protection of Human Rights and Fundamental Freedoms - Explanatory Report - [2009] COETSER 1 (27 May 2009).

obligation or not. If the court rules that the obligation was not fulfilled by the concerned state, the Committee of Ministers consider the measures to be taken.²²

Until the contracting state fulfils its legal obligation imposed by the court, the case should be present on the agenda of every meeting of the Committee of Ministers regarding human rights and the Committee of Ministers continues the supervision. The main tool used by the Committee of the ministers is peer pressuring. During the meetings, committee members express their concerns and call on the states to fulfill their obligation and execute the courts judgment. In case, the above-mentioned measures are not enough, further actions are taken such as adoption of the resolutions and communication with the officials of the respondent states. In some cases, the committee can use the assistance of other bodies of the Council and the political pressure applied by the council of Europe member states.²³ Article 3 of the statute of the Council of Europe, imposes the legal obligation to the contracting party to accept the shared values and principles of the Council, and “collaborate sincerely and effectively in the realization of the aim of the Council”.²⁴ If the part fails to do so, the ultimate outcome can be the stopping the voting and representation right of the state within the Council or even the expulsion from the Council of Europe in the light of article 8 of the Statue of the Council of Europe.²⁵

1.3. The practice of ignoring ECtHR decisions and the response of the Committee of Ministers

The practice of ignoring or partially implementing the ECtHR decisions is common in the Council of Europe member states. Neither the size of the country nor its weight in the international arena matters, when it comes to the Committee of Ministers to assess the level of the compliance by the states in regards with the ECtHR decisions and if applicable to take the respective measures, however as the practice shows the tactic of the Committee of the ministers to ensure the implementation of the judgements of the ECtHR has always been the dialogue with the concerned states and to use the strictest possible measures only as a last resort. In the case *McFarlane against Ireland* the ECtHR held the violation of the article 13. According to the Committee of Ministers

²² Council of Europe. European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14. Rome. 4 November 1950.

²³ Dijk, P., Hoof, F., Rijn, A., Zwaak, L. (2018). *Theory and Practice of the European Convention on Human Rights*. Antwerp: Intersentia, 243.

²⁴ Council of Europe. (1949). Statute of the Council of Europe: London, 5th May, 1949.

²⁵ Bussararin Ericson, *supra nota* 20, 16.

even 17 years after the court's ruling, Ireland has not taken sufficient measures as the violations of human rights of the same nature have been detected since after. Therefore, the Committee of Ministers adopted the interim resolution and called Ireland to execute the courts judgement.²⁶

Mammadov v Azerbaijan case is also noteworthy in this context as the Committee of Ministers for the first time in the history in pursuant with the article 46(4) of the ECHR started the infringement proceedings against Azerbaijan. Mammadov is an Azerbaijani opposition leader and activist who was arrested with the numerous charges including organization of mass disorder after declaring publicly his wish to participate in the presidential elections of Azerbaijan and was sentenced to 7 years. In 2014 the ECtHR found the violation of article 5(1) and held that he was arrested unreasonably and the Committee of the Ministers called Azerbaijan to release Mammadov immediately. However, Mammadov remained in prison.²⁷

In 2017 the Committee of Ministers started infringement procedure against Azerbaijan, as Azerbaijan did not comply with the judgement of ECtHR and did not release Mammadov.²⁸ This was followed by the release of Mammadov in 2018. Nevertheless, he was not fully acquitted by the state as his status of conviction did not give him the right to play the active role in the politics. As a result of this, the Committee of Ministers had no other choice, but to proceed with the infringement procedures and refer the case the court which was followed by the decision of the ECtHR ruling that Azerbaijan had violated the article 46(1) of the convention, by failing to execute the judgement of the ECtHR.²⁹ Following this strict measure taken by the Council of Europe, in 2020 the Supreme Court of Azerbaijan re-examined the case restored all the rights of Mammadov, including the right to participate in the elections. As a result of this, the Committee of Ministers closed the infringement proceedings.³⁰

²⁶ Council of Europe. the Committee of Ministers. Execution of the judgment of the European Court of Human Rights. McFarlane against Ireland. Interim Resolution. CM/ResDH(2020)202. 1383rd meeting of the Ministers' Deputies. October 2020.

²⁷ Strasbourg observers.(2017).Retrieved from <https://strasbourgoobservers.com/2017/12/20/the-committee-of-ministers-goes-nuclear-infringement-proceedings-against-azerbaijan-in-the-case-of-ilgar-mammadov/#more-4075>, 25 March 2021.

²⁸ Council of Europe. the Committee of Ministers. Execution of the judgments of the European Court of Human Rights. Interim Resolution CM/ResDH(2020)47. Ilgar Mammadov group against Azerbaijan. 1369th meeting of the Ministers' Deputies. 5 March 2020.

²⁹ PROCEEDINGS UNDER ARTICLE 46 § 4 IN THE CASE OF ILGAR MAMMADOV v. AZERBAIJAN(GC),no.15172/13, 29 May 2019.

³⁰ Council of Europe. (2020). Department for the Execution of Judgments of the Court. News. Retrieved from <https://www.coe.int/en/web/execution/-/azerbaijani-supreme-court-acquits-human-rights-defenders-to-execute-the-european-court-s-judgments>, 25 March 2021.

2. History of ECtHR and Russia relations

The Russian Federation was admitted to the Council of Europe in 1996 despite of the serious incompliance of its legal system with the European standards. The view that the integration policy with the hope that Russia would adjust its legislation to the democratic standards and European values, prevailed over the policy of isolation.³¹ In 1998 Russia ratified the convention and became bound to the mandatory jurisdiction of ECtHR according to the article 1 of the convention.³²

Since the Russian Federation became the contracting party of ECHR, ECtHR has made 3056 judgements concerning Russia and they have been transmitted for the supervision to the Committee of the Ministers of the Council of Europe, out of which 1259 have been closed by the resolution.³³ In the year of 2020 the court received 10163 applications regarding Russia, out of which 9593 were found as inadmissible. On 570 applications the court delivered 185 judgements, 173 of which found the breach of at least one article of European Convention on Human Rights.³⁴

2.1. Russian constitution about international treaties

The 1993 constitution of Russian Federation contains specific articles enabling its citizens to apply to the international courts.

Article 15 of the Russian constitution states that: “The Constitution of the Russian Federation shall have the supreme juridical force”. According to the 4th provision of the same article “The universally-recognized norms of international law and international treaties and agreements of the Russian Federation shall be a component part of its legal system if an international treaty or agreement of the Russian Federation fixes other rules than those envisaged by law, the rules of the international agreement shall be applied.” Therefore, international law is explicitly declared as an integral part of Russia’s legal system.³⁵

³¹ Blankenagel, A. (2019). The Relationship between the European Court of Human Rights and the Constitutional Court of the Russian Federation: A Reply to Jeffrey Kahn. *European Journal Of International Law*, 30(3), 968.

³²Jägers, N. M. C. P., Zwaak, L. (2008). The Russian federation and human rights: How should the council of Europe deal with the problems posed by its largest member state? *Netherlands Quarterly of Human Rights*, 26(1), 3-7.

³³Council of Europe. The Committee of Ministers. DEPARTMENT FOR THE EXECUTION OF JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS. Country Factsheet. Russia.

³⁴ European Court of Human Rights. Press country profile. Russia.

³⁵ Blankenagel, *supra nota* 31, 962.

According to article 79 of Russian Constitution: “The Russian Federation may participate in interstate associations and transfer to them part of its powers”³⁶ if it does not contradict Russian constitution and violate rights of its citizens.

Article 31(1) and (2) of the “Federal law on international treaties of the Russian Federation” also describe and outline liability of Russia to execute the obligations imposed by the international treaties.³⁷

The presented provisions from the constitution of Russian Federation and Federal law is a legal basis of application of ECtHR decisions in Russia, however its vagueness³⁸ left the space to the certain representatives of Russian government to interpret the law according to their own interests.

2.2 Triggers of the dispute between the ECtHR and Russia

The tension between the Russian Federation and the ECtHR dates back to the end of the last century, from the beginning of Russia’s integration into the Council of Europe and ratification of European Convention on Human Rights. Generally, the clash between the national and international courts arise in two scenarios: 1) when there are differences in the perceptions of the protected rights and 2) when there is a dispute about the supremacy between the constitution and an international treaty, respectively international or national court. In the relationship between the Constitutional court of Russia and the ECtHR, disputes of the both of the natures have taken place.³⁹

The judgement of ECtHR in 2011, in the case *Markin v. Russia* which intensified the tension between the two bodies even more, is an example of clash of the first nature. Later, it was followed by two more decisions of ECtHR in *AO Neftyanaya Kompaniya Yukos and Anchugov and Gladkov* cases which are the examples of the second type of disputes. These judgements resulted in dissatisfaction in political ruling elite of the Russian Federation, which itself caused the revision

³⁶Constitution of the Russian Federation. Moscow. 25 December, 1993.

³⁷ The State Duma. FEDERAL LAW NO. 101-FZ OF JULY 15, ON THE INTERNATIONAL TREATIES OF THE RUSSIAN FEDERATION. June 16, 1995.

³⁸ Danilenko, G. (1999). Implementation of international law in CIS states: theory and practice. *European Journal Of International Law*, 10(1), 51-69.

³⁹ Filatova, M. (2016) The implementation of the European Convention on Human Rights and the European Court’s case-law in the Russian legal order. In: Cozzi,A., Sykiotou,A., Rajska, D., Krstic,I., Filatova, M., Katic, N., Bard, P., Bourgeois,S.,*Comparative study of the implementation of the ECHR at the national level*(107-126). Belgrade: Human Rights Friendly Judiciary,123.

of the constitution of Russian Federation. The chapter will discuss the effect of the abovementioned cases on the amendments to the Russian constitution.

2.2.1 Konstantin Markin v. Russia

The tension between Russian Federation and the ECtHR araised after the ECtHR ruling on Markin case. Konstantin Markin- a radio intelligence military in Russian army was a divorced father of three children. Markin asked for three years leave in order to raise his children. The Russian military court ruled that only servicewomen are entitled to three years leave, while servicemen can only leave for three months. Markin, after exhausting all the other instances applied to the constitutional court of Russia, which also ruled that Markin after joining the military force of Russia had signed for certain limitations for his rights and freedoms, furthermore court relied on the article 38(1) of the Russian constitution which states that “Maternity and childhood, and the family shall be protected by the State”⁴⁰, outlining the special role of motherhood and not fatherhood.⁴¹

Eventually Markin went to ECtHR, and claimed that his rights protected by article 14 to enjoy the rights protected by the convention “without discrimination on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status” were violated. The court held that Markins rights protected by the article 14 were violated together with the article 8-right to respect for private and family life, meaning the court discussed Markins case not only as sex discrimination but analyzed broadly as a violation of right for family life. Russia claimed that the dismissal of Markin would be a threat to the national security, as he was a serviceman in the military and his absence would decrease the combating capabilities of Russian army. Nevertheless, the court dismissed these claims and stated that during the period of the infancy of the child, in regards with the taking care of the child motherhood and fatherhood should be placed in the same position and Russian authorities should take appropriate measures for ensuring so.⁴²

This judgment of ECtHR was unprecedented, not for the reason that it imposed any serious monetary fine on Russia, yet it overruled the decision of the constitutional court of Russia. The chairman of the constitutional court of Russia-Valerii Zorkin stated that the decision was politically

⁴⁰ Constitution of the Russian Federation, *supra nota* 36.

⁴¹ Vaypan, G. (2014). Acquiescence Affirmed, Its Limits Left Undefined: the Markin Judgment and the Pragmatism of the Russian Constitutional Court vis-à-vis the European Court of Human Rights. *RUSSIAN LAW JOURNAL*, 2(3),131.

⁴²Konstantin Markin v. Russia [GC], no. 30078/06, ECHR 2012 (extracts).

motivated and it showed a lack of respect to the Russian lawmakers as well as to the sovereignty of the state.⁴³

According to Zorkin's interpretation of article 15(4) of the Russian constitution, which states that "if an international treaty or agreement of the Russian Federation fixes other rules than those envisaged by law, the rules of the international agreement shall be applied", this rule applies to the conflicts between Russian laws and International treaties, not to the conflict between Russian constitution and international treaties and despite of the fact that ECHR is regarded as an integral part of Russian legal system, it is not higher than the constitution of state. Zorkin's statement was followed by the statement of the prime minister of Russia who implied on the fact that it is the exclusive right of the constitutional court to interpret the constitution and state will not allow foreign institutions to diminish the sovereignty of the country and modify their legislation.⁴⁴

In June of 2011, the acting chairman of upper house of Russia's parliament, initiated the bill which would enable the Russian constitution court to overrule the judgement of ECtHR declaring the certain provisions of Russian law incompatible with the convention. According to the amendments, Russia was fully liable to execute the decisions of ECtHR only in the cases when the constitution court of Russia would determine that the respective law was not in compliance with the Russian constitution. However, this initiative, caused the serious overwhelming in the political and legal communities, and the bill was withdrawn.⁴⁵

2.2.2 OAO Neftyanaya Kompaniya Yukos v. Russia

Yukos was the company founded in 1995, which operated in natural gas and oil sector. Yukos was regarded as one of the world's top companies in the sector. In 2006 the company went bankrupt. The application by Yukos to the ECtHR was made in 2004. They were claiming that due to the unlawful actions of Russian authorities the company was destroyed and their rights protected by the convention including: article 6 right to fair trial, article 1 of protocol 1 protection of property, were violated. The company claimed compensation of 37.98 billion from the state. In 2011 the court partially satisfied the claims of Yukos and found Russia responsible for the violation of article

⁴³ Aksenova, M., Marchuk, I. (2018). Reinventing or rediscovering international law? The Russian Constitutional Court's uneasy dialogue with the European Court of Human Rights. *International Journal of Constitutional Law*, 16(4), 1322-1346.

⁴⁴ Pomeranz, W. (2012). Uneasy Partners: Russia and the European Court of Human Rights, *HUMAN RIGHTS BRIEF* 19,3, 19.

⁴⁵ Hugh Williamson, Nicola Duckworth, Souhayr Belhassen. (2011). Letter to President Medvedev regarding ECHR legislation. Retrieved from <https://www.hrw.org/news/2011/08/12/letter-president-medvedev-regarding-echr-legislation>, 1 April 2021.

1 of protocol 1 of the convention, the decision was followed by the second judgement in 2014 which awarded approximately 55000 shareholders of Yukos with 1.87 billion euros of damages.⁴⁶ Following the decision of ECHR, 93 members of Russian Duma turned to the constitutional court of Russia, in order to declare the federal law obliging Russia to execute the judgements of the international courts unconstitutional. The constitutional court of Russia rejected this claim, however in its judgement of 14th July, 2015 No. 21-II/2015 the court ruled that in the cases of inconsistency between the ECtHR judgements and the Russian constitution, the state's obligation derived from the article 46 of ECHR to execute the judgements of the court is void and Russian constitution should prevail, justifying its argument by declaring the supremacy of constitution of Russia in the law hierarchy. According to the court, despite of the membership of Russia in international organizations, and being party to the treaties, the sovereignty and the fundamental constitutional principles should not be derogated. Moreover, the constitutional court conceded itself authority to determine whether the judgement is in compliance with the constitution and decide whether it has to be implemented or not for the purpose of protecting the Russian Constitution.⁴⁷

2.2.3 Anchugov and Gladkov v. Russia

Gladkov and Anchugov were the prisoners serving the sentence in Russia. Pursuant to the article 32(3) of the constitution of Russia “Deprived of the right to elect and be elected shall be citizens recognized by court as legally unfit, as well as citizens kept in places of confinement by a court sentence”, their right to vote was deprived. At first the prisoners appealed to the constitutional court of Russia, claiming that the abovementioned article of the constitution violated their constitutional rights, however appeals were dismissed. After that they appealed to the ECtHR. The court held, that the rights of Gladkov and Anchugov were violated by the state and the provision was in contrary with the convention.⁴⁸

⁴⁶ Brabandere, E. (2016). OAO Neftyanaya Kompaniya Yukos v. Russia (Eur. Ct. H.R.). *International Legal Materials*, 55(3), 474-495.

⁴⁷ The Constitutional court of Russian Federation. Judgement No. 21-II/2015. 14 July, 2015.

⁴⁸ Anchugov and Gladkov v. Russia, nos. 11157/04 and 15162/05, 4 July 2013.

2.3 Decisions of the constitutional court of Russia

Following the ruling of ECtHR in Anchugov and Gladkov case, the constitutional court of Russia reviewed the decision of the ECtHR, and in the judgement of 19 April 2016 No. 12-II/2016 held that the judgement of ECtHR explicitly contradicts the article 32 of the Russian constitution, hereby it cannot be enforced in Russia.⁴⁹ Furthermore, the court noted the importance of using its right to “self-objection to ECtHR” on rare occasions with the purpose of making “contribution to the crystallization of the developing practice of the European Court of Human Rights in the field of suffrage protection, whose decisions are called upon to reflect the consensus having formed among states parties to the Convention.”⁵⁰

This decision of the court was followed by the judgement of 19 January 2017 No. 1-II/2017, regarding the enforceability of the ECtHR’s decision in Neftyanaya Kompaniya Yukos v. Russia case. The court held that the decision of ECtHR in the abovementioned case should not be enforced in Russia, thus Russia was not obliged to pay damages granted by ECtHR to the shareholders of Yukos.⁵¹ The decision of Russian Constitutional Court was unprecedented, as it granted itself a power not only to revise decisions concerning the constitutional and legislative parts of the judgements, but it interfered and revised the decision awarding just satisfaction by ECtHR to the damaged party, which can be assessed as a consolidation of power in the hands of Russian Constitutional Court and can be the basis of Russia’s further avoidance of fulfilling the judgements of the ECtHR.⁵²

2.4 Interim opinion of the Venice Commission

After the constitutional court of Russia’s judgement of 14 July of 2015, in December of 2015 the Venice Commission was asked by the Legal Affairs Committee of the Parliamentary Assembly of the Council of Europe to give an opinion regarding the respective amendments of the Russian law. The Commission in its interim opinion stated that the amendments to the law giving the power to

⁴⁹ Kleimenov, I. (2018). Judgment of the Constitutional Court of the Russian Federation no 12-P/2016: Refusal to execute judgments of ECHR or the search for compromise between Russian and international law. *Questions of International Law*, 1, 19.

⁵⁰ Council of Europe. The Venice Commission. Opinion No. 832 / 2016. RUSSIAN FEDERATION JUDGMENT No. 12-II/2016 OF 19 APRIL 2016 OF THE CONSTITUTIONAL COURT. 6 May 2016, 13.

⁵¹ The Constitutional Court of the Russian Federation. Judgment No. 1-II/2017. 19 January 2017.

⁵² Verfassungsblog ON MATTERS CONSTITUTIONAL. Timofeev, M. (2017, January 26) Money Makes the Court Go Round: The Russian Constitutional Court’s Yukos Judgment. [Blog post]. Retrieved from <https://verfassungsblog.de/money-makes-the-court-go-round-the-russian-constitutional-courts-yukos-judgment/>, 3 April 2021.

the Constitutional court of Russia, to declare the judgements of ECtHR unenforceable on the basis of its non-compliance with the Russian constitution, contradicts the principle of “Pacta sunt servanda”⁵³ outlined in the article 26 of the Vienna Convention on the Law of Treaties(1969)- “Every treaty in force is binding upon the parties to it and must be performed by them in good faith.” As well as contradicting the article 27 of the same treaty which states that “the party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”⁵⁴ Moreover, these amendments are in conflict with the international obligations of the state derived by the article 46 of ECHR convention. Out of the recommendations of the Commission given to the Russian Federation, following suggestions are noteworthy: to remove the power of Constitutional Court to determine the enforceability of the judgement and to change “enforceability” with the “compatibility with the Russian Constitution of a modality of enforcement, proposed by the Russian authorities, of an international decision”⁵⁵, as well as to make clear that the individual measures of the ECtHR’s judgements such as just satisfactions, cannot be revised by the Constitutional Court⁵⁶ and to make sure that any proceeding regarding the determination of enforceability of the judgement should not be carried out without involving the applicant of the respective case to the international court⁵⁷.

2.5 The new amendments to the articles 79 and 125 of the Russian constitution

In January of 2020, the president of Russian Federation Vladimir Putin addressed the parliament with the initiative of amending the certain parts of the constitution.⁵⁸ Out of the multiple provision of the constitution planned to be amended, amendments to the articles 79 and 125 are noteworthy. Namely article 79 of Russian constitution states that:” The Russian Federation may participate in interstate associations and transfer to them part of its powers according to international treaties

⁵³ Council of Europe. The Venice Commission. INTERIM OPINION No. 832/2015. ON THE AMENDMENTS TO THE FEDERAL CONSTITUTIONAL LAW ON THE CONSTITUTIONAL COURT OF THE RUSSIAN FEDERATION. 106th Plenary Session.11-12 March 2016,11.

⁵⁴ United Nations.Vienna Convention on the Law of Treaties. Vienna.23 May 1969.

⁵⁵ Council of Europe, *supra nota* 53,36.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*,26.

⁵⁸ International Commission of Jurists. (2020). Briefing Paper on Certain Amendments to the Constitution of the Russian Federation,1. Retrieved from <https://www.icj.org/russian-federation-constitutional-amendments-undermining-human-rights-protection-should-be-withdrawn/> ,4 April 2021.

and agreements, if this does not involve the limitation of the rights and freedoms of man and citizen and does not contradict the principles of the constitutional system of the Russian Federation.”

The amendments to this article state that “Decisions of intergovernmental bodies, adopted based on the provisions of international treaties of the Russian Federation in their interpretation which contradicts the Constitution of the Russian Federation, are not executed in the Russian Federation.” Moreover article 125, which defines the role and the authority of the constitutional court of Russia, in its provision 5.1 b⁵⁹ states that international treaties which contradict the constitution should not be enforced. The new amendments give the power to the constitutional court of Russia to decide whether the treaties or decisions of the international bodies imposing certain obligations on Russia contradict the constitution.

The amendments were passed after the national vote which was carried out on 1st of July of 2020, with the absolute majority of 78% voting in favor of constitutional revision. The president of Russian Federation Vladimir Putin signed the order on 3rd of July, after which on 4th of July the new amendments came into force.⁶⁰

3. The examination of compatibility between the article 46 of ECHR and the amended articles 79 and 125 of the constitution of the Russian Federation

In January 2020, the Venice Commission was asked again, by the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly, for its opinion whether the new amendments of the revised constitution of the Russian Federation, would contradict the article 46 of the ECHR about the execution of the ECtHR judgements and whether the new amendments would be compatible with the current version of the article 15 of the Russian constitution. However, the Commission checked the compatibility of the proposed amendments to the articles 79 and 125 of the constitution. According to the Commission the amendments to the abovementioned articles is a

⁵⁹ HINES, J.H. et al. (2020). RUSSIA ADOPTS MAJOR AMENDMENTS TO ITS CONSTITUTION. Lawflash. Morgan Lewis. Retrieved from <https://www.morganlewis.com/pubs/2020/07/russia-adopts-major-amendments-to-its-constitution>, 15 April 2021.

⁶⁰ THE CONVERSATION.(2020). Vladimir Putin secures constitutional changes allowing him to rule until 2036 – what this means for Russia. Retrieved from <https://theconversation.com/vladimir-putin-secures-constitutional-changes-allowing-him-to-rule-until-2036-what-this-means-for-russia-141103>, 15 April 2021.

reflection of changes to the Federal Constitutional law, which itself enabled the constitutional court of Russia to overrule the judgements of the international courts and to declare them unenforceable.⁶¹ Commission states that by its decision to become a member of the Council of Europe and ratify the European convention on Human Rights, Russia is bound to the judgements of ECtHR pursuant to the article 46 of the convention.⁶² Even in the countries where the constitution prevails over the European convention on Human rights, and constitutional court of the respective country determines that there is a conflict between the provision of the constitution and the interpretation of this provision by the ECHR, it should not automatically mean that the decision should not be enforced- the dialogue between the domestic courts and ECtHR should take place before transferring it to the Committee of Ministers and even the amendment of the constitution can be discussed.⁶³

According to the commission the proposed amendment to the article 79 introduces a broad term “contrary to the constitution” and is declaring it as a basis for not fulfilling the international obligation of country to execute the judgements of ECtHR.⁶⁴ Moreover, in commissions opinion amendments to the article 83 of the constitution which gives the power to the Council of Federation to fire the judges of the Constitutional court at the request of President, can possibly jeopardize the political independence of the court and make damage the transparency of the process of assessment of the judges.⁶⁵ Commission thinks that it cannot be explicitly stated to what extent the ECtHR judgements will be implemented after the new amendments to the constitution, as it strongly depends on the way of interpretation of these amendments, however the commission stresses that constitutional court should not have power to revise individual measures such as the payment of just satisfaction.⁶⁶

According to the Commission the amendment to the article 79 has to be removed, or the wording should be changed similarly to the article 125 5(b) which underlines the importance of finding a solution, as the current wording does not leave the space for the possible dialogue putting an end to the process of enforcement. Moreover, Commission restates its opinion that giving power to the Constitutional Court of Russia to declare the decision of ECtHR unenforceable, is a violation of

⁶¹ Council of Europe. The Venice Commission. Opinion No. 981/2020. ON THE DRAFT AMENDMENTS TO THE CONSTITUTION (AS SIGNED BY THE PRESIDENT OF THE RUSSIAN FEDERATION ON 14 MARCH 2020) RELATED TO THE EXECUTION IN THE RUSSIAN FEDERATION OF DECISIONS BY THE EUROPEAN COURT OF HUMAN RIGHTS, written procedure replacing the 123rd. plenary session. 18 June 2020.4.

⁶² *Ibid.*, 17.

⁶³ *Ibid.*

⁶⁴ *Ibid.*,13.

⁶⁵ *Ibid.*,18.

⁶⁶ *Ibid.*,17.

Russia's international obligation imposed by the article 46 of the European Convention on Human Rights.⁶⁷

As for the question of compliance of the new amendments and article 15(4) of the Russian Constitution, the Commission thinks that it is not within its competence to determine, as it is within a competence and right of the Constitutional Court of Russia to examine the abovementioned issue, which it already has done and in its decision of 20 March 2020 held that new amendments are in compliance with the article 15 of constitution.⁶⁸

3.1 Preserving sovereignty or using the Constitutional court as a political weapon?

As it has been already mentioned, states, in case of the contradiction between their constitutions and International treaties, have two options: to harmonize the domestic law with the international treaties they are planning to become a party of, or disregard one of them according to their place in the law hierarchy. The same practice applies to the relations between the Constitutional courts of states and the ECtHR- to accept and execute the judgements of the ECtHR without any objections or in case the national constitutional court has different opinions in regards with the judgement, it carries out the dialogue and discussions with the ECtHR for the purpose of serving the best interests of the people. Or constitutional courts have option of choosing the second path- the confrontation with the ECtHR and non-compliance with the judgements with the political motives.

The actions of the UK after the judgement of ECtHR in the case *Hirst v UK* 2005, where the court ruled that UK had violated the article 3 of protocol 3 of the convention regarding to the voting rights of the prisoners, falls in the criteria of the first practice. The UK government for the purpose of executing the judgement initiated the new bill to the parliament to enable the prisoners to participate in the elections, nevertheless the parliament rejected the bill, and after since that parliament together with the government have been refusing to enforce the judgement and change the respective legislation.⁶⁹ The Committee of Ministers adopted the interim resolution in 2009,

⁶⁷ *Ibid.*, 18,

⁶⁸ *Ibid.*

⁶⁹ Adams, E. (2019). Prisoners' Voting Rights: Case Closed? Retrieved from <https://ukconstitutionallaw.org/2019/01/30/elizabeth-adams-prisoners-voting-rights-case-closed/>, 5 April 2021.

however bill has not been adopted.⁷⁰ The dialogue between the Committee and the UK continued and, in 2017 a compromise solution was found: namely administrative 'changes to the law were made, which ensured that in time the person is sentenced, a judge has to explicitly state that his/her right to vote is deprived, moreover, prisoners on temporary licence and on home detention were allowed to participate in the elections.⁷¹ The Committee of Ministers found the abovementioned measures sufficient enough to close the examination of the case in 2018.⁷²

Russia, taking into consideration the recent amendments to the constitution and the decisions of the Constitutional court of Russia in regards with the execution of the ECtHR judgements, clearly chose the second path which means that it will not aim to find the solution by collaborating together with the ECtHR in case of the conflict and will not conduct a constructive dialogue in order to solve the respective issue, but the decision of the ECtHR will be disregarded and not executed- by not taking general measures and from the recent practice by not to paying the just satisfaction to the victims⁷³, not because of having different approach than the ECtHR for ensuring the better protection of human rights in the country, but to serve the interests of the political elite.

The constitutional courts of the states have the power and authority to determine to what extent the international treaties and the judgements of international courts will affect the domestic legislation. Of course, it is in the interests of some of the states to be less effected by the international treaties, but the binding force of the treaty balances these wishes.⁷⁴

There have been various disagreements between the Superior courts of the UK and the ECtHR, the Constitutional court of Germany and the ECtHR but the relationship of the bodies have been based on mutual respect and trust, without any concerns regarding the political biasness or the issues of rule of law. And the result of this relationship is proportional: even in the cases of the serious disagreements, parties have always been reaching the agreement and there has never been confrontation. Therefore, it is very important state to have politically neutral constitutional court, which acts in the best interests of the state and its citizens.

Therefore, even if the international society ignores the amendments to the articles 79 and 125 of Russian Constitution, there is still amendment to the article 83 which gives the one man – the

⁷⁰ Council of Europe. the Committee of Ministers. Interim Resolution CM/ResDH(2009)160. Execution of the judgment of the European Court of Human Rights. Hirst against the United Kingdom No. 2. 1072nd meeting of the Ministers' Deputies. 1-3 December 2009.

⁷¹ Adams, E. *supra nota* 69.

⁷² Council of Europe. the Committee of Ministers. CM/Notes/1331/H46-35. Execution of the judgment of the European Court of Human Rights. Hirst against the United Kingdom No. 2. 1331st meeting of the Ministers' Deputies. 4-6 December 2018.

⁷³ Mäger, K. (2016). Enforcing the Judgments of the ECtHR in Russia in Light of the Amendments to the Law on the Constitutional Court. *Juridica International*,24,20.

⁷⁴ Dederer, H. (2017). Import and Impacts of the ECHR and the Judgments of the ECtHR in the Russian and German Legal System. *Journal Of Siberian Federal University. Humanities & Social Sciences*, 10(6),783.

president of Russian Federation enormous power to dismiss and appoint the judges of the Constitutional court of Russia, which will concentrate an enormous power over the legal system in the hands of one person, which itself is very risky and can possibly jeopardize the entire judicial system.⁷⁵

The Constitutional courts of the different European states have ruled about the effects of ECtHR judgements on the domestic legislation.

The precedent decision of the Constitutional court of Germany about the effects of ECtHR judgements on the domestic legislation, in Görgülü case determined that the ECtHR judgements have to be taken into consideration, but only within the frame of the German Constitution.⁷⁶ Meaning, domestic courts have right not to accept and apply the ECtHR judgements unconditionally, but the explanation for the decision has to be well reasoned.⁷⁷

The UK courts take more or less the same approach, as according to the section 2 of Human Rights Act (HRA) they should take into account the relevant judgements of the ECHR, however they are not bound by them.⁷⁸

3.2 The examination of proportionality of the measures taken by the Council of Europe against Russia

After the Euromaidan Revolution and stepping down of the president of Ukraine Viktor Yanukovich, in February 2014, several armed groups were deployed by Russia to Crimea-Ukrainian peninsula. These groups not having any distinctive signs or uniforms were acting without the authority of the local government and seized control over the strategic targets of the Peninsula.⁷⁹ Vladimir Putin justified the occupation in the name of protecting the civilians and its citizens. The same strategy was used for the justification of the occupation of Georgian territories by Russia.⁸⁰

⁷⁵ Council of Europe. *supra nota* 61,18.

⁷⁶ Górski, M. (2018). Quo vadis, Russia? On the Country's Recent Approach Towards Implementing Judgments of European Court of Human Rights. *Comparative Law Review*, 23, 151.

⁷⁷ Case 2 BvR 1481/04, Görgülü [2004] 111 Entscheidungen des Bundesverfassungsgerichts 307 (Federal Constitutional Court, 14 October 2004).

⁷⁸ Donald, A., Gordon, J., Leach, P. (2012). The UK and the European Court of Human Rights Research Report 83. Manchester: Equality and Human Rights Commission, 24.

⁷⁹ Tsybulenko E., Kelichavyi B. (2018). International Legal Dimensions of the Russian Occupation of Crimea. In: Sayapin S., Tsybulenko E. (eds.), *The Use of Force against Ukraine and International Law* (277-296). The Hague: T.M.C. Asser Press/Springer, 278-279.

⁸⁰ Tsybulenko E., Francis J.A. (2018). Separatists or Russian Troops and Local Collaborators? Russian Aggression in Ukraine: The Problem of Definitions. In: Sayapin S., Tsybulenko E. (eds.), *The Use of Force against Ukraine and International Law* (123-144). The Hague: T.M.C. Asser Press/Springer, 130.

This was followed by the so-called referendum in March, regarding the legal status of the autonomous republic of Crimea which was held against the all principles of the international and local norms, the results of which were recognized by Russia and the annexation of Crimea was justified in the name of “the reunification of the divided Russian people and a correction of historical injustice”.⁸¹ The actions of the Russian Federation were condemned by international society, only 11 UN member states voted against the United Nations General Assembly resolution A/RES/68/262 “Territorial integrity of Ukraine” (27.03.14).⁸² Except the occupation, there has been a serious violation of human rights of Crimean Tatars by the Russian Federation under the shield of anti-extremist and anti- terrorist activities⁸³, including the racial discrimination which was mentioned in the PACE resolution 2133.⁸⁴

In response to the annexation of the territories of Ukraine by Russia the PACE suspended Russia’s right to vote.⁸⁵ In 2017 the Russian Federation stopped paying the membership contribution to the organization which was 33 million euros per year⁸⁶ and made a threat that they would leave the organization.⁸⁷ During the three years while Russia refused to pay the contribution fee, the Council of Europe got 90 million euros less which caused various financial cutbacks in the budget of the organization including: 250 staff members of the organization 10% became in danger of losing their jobs.⁸⁸ In 2019 PACE restored Russia’s right to vote with 118 votes in favour, 62 against and 10 abstentions.⁸⁹

From political point of view the supporters of this decision outlined the importance of Russian population having access to the ECtHR, taking into consideration the present political and legal issues in the country, in regards with the rule of law and the independence of the judicial system, however at the same time supporters of this decision do not remember that they are not accepting

⁸¹ Tsybulenko, Kelichavy, *supra nota* 79,279.

⁸² *Ibid.*

⁸³ Tsybulenko, E. & Platonova, A. (2019). Violations of Freedom of Expression and Freedom of Religion by the Russian Federation as the Occupying Power in Crimea. *TalTech Journal of European Studies*, 9(3), 134-147, 137.

⁸⁴ Council of Europe. Parliamentary Assembly. Resolution 2133. Legal remedies for human rights violations on the Ukrainian territories outside the control of the Ukrainian authorities, 12 October 2016.

⁸⁵ BBC News. (2019). Ukraine fury as Russia gets back Council of Europe voting rights, 25 June 2019. Retrieved from <https://www.bbc.com/news/world-europe-48755606>, 12 April 2021.

⁸⁶ Erlanger, S. (2019). Council of Europe Restores Russia’s Voting Rights. Retrieved from <https://www.nytimes.com/2019/06/25/world/europe/council-of-europe-russia-crimea.html>, 12 April 2021.

⁸⁷ Netherlands Helsinki Committee. (2019). Russia’s Continuation in the Council of Europe: Challenges and Chances for Human Rights. Retrieved from <https://www.nhc.nl/russia-and-council-of-europe-challenges-chances/>, 12 April 2021.

⁸⁸ MOUNIER, J.L. (2019). Russia's undiplomatic return to the Council of Europe. Retrieved from <https://www.france24.com/en/20190628-russia-undiplomatic-return-council-europe-ukraine>, 12 April 2021.

⁸⁹ JAM news. (2019). “The shame of European diplomacy” – why PACE voting rights were given back to Russia. Retrieved from <https://jam-news.net/the-shame-of-european-diplomacy-why-pace-membership-was-returned-to-russia/>, 12 April 2021.

Belarus in the Council of Europe with the reason of its non compliance with the democratic standards. Meanwhile, Russia uses this factor as a leverage and instead of fulfilling its international obligations continues further violations of human rights as well as international norms by which it is bound.

The insufficient reactions by the Council of Europe regarding the judgements of the Constitutional court of Russia concerning the non-enforcement of the ECtHR decisions and restoration of the right to vote to Russia by the PACE did not bring any considerable progress in the actions of Russian Federation, vice versa – it resulted in the reflection of these decisions in the ammended constitution of the Russian Federation.

Moreover, there has been selective attitude towards the Russian Federation which has political and financial reasons. A good example of this is Mammadov case where in a short period of time the Committee of the Ministers started infringements procedures against Azerbaijan which resulted in the referring case to the ECtHR and the declaration that Azerbaijan has violated the article 46(1) of the ECHR, whereas the Committee of Ministers in its resolution CM/ResDH(2019)240 regarding the Anchugov and Gladkov case found that the measures taken by the respondent state were sufficient enough to declare that Russia has complied with the article 46(1) of the ECHR and has fulfilled its legal obligation, therefore the Committee closed the examination. Nevertheless, the general measures taken by Russia which were sufficient for the Committee to close the examination, is insufficient for the avoiding the violations of human rights of the same nature, as the provision of the constitution banning the voting right of the prisoners was not amended, but a new form of the punishment- the community work was introduced, which may be imposed for relatively non-heavy crimes⁹⁰ and during of which citizens are not deprived their right to vote.⁹¹ Moreover, the Committee did not react on a very dangerous precedent by which the Russian Constitutional Court declared the judgement of ECtHR incompatible with the Russian constitution, therefore unenforceable in Russia. The same can be concluded regarding the Yukos case, when on 1 October of 2020 the Committee of Ministers adopted the interim resolution urging once again

⁹⁰ Bogush, G., Pads kocimaite, A. (2019). Case Closed, but what about the Execution of the Judgment? The closure of Anchugov and Gladkov v. Russia. Retrieved from <https://www.ejiltalk.org/case-closed-but-what-about-the-execution-of-the-judgment-the-closure-of-anchugov-and-gladkov-v-russia/>, 20 April 2021.

⁹¹ Council of Europe. the Committee of Ministers. Resolution CM/ResDH(2019)240. Execution of the judgments of the European Court of Human Rights Two cases against Russian Federation. 1355th meeting of the Ministers' Deputies. 25 September 2019.

the Russian authorities fulfil their obligation-execute the judgement and provide the clarification in regards with the effect of article 79 on the case⁹², which is the late and insufficient measure.

Thus, it can be noted that the selective justice was applied as the serious violations by the superpower and the biggest contributor of the Council of Europe-Russia were ignored or only soft measures were taken, while the strictest possible measures were used against Azerbaijan.

Generally, every organization has the statute which imposes legal obligations to every contracting party which they have to fulfil in good faith. Nevertheless, if the contracting party is not loyal to this principle and refuses to fulfil its duty, the organization has to take measures and the party has to face consequences for two main reasons: first, to cease the violation of its obligation and act in good faith and second organization to demonstrate that betraying to the principles and declaring avoidance to fulfil ones international obligations has serious consequences no matter the size or economic or military power of the country as the sovereign states are equal and they share the mutual principles of democracy and rule of law. Respectively, this will discourage other parties to act in the same manner and further violations will be avoided.

The recent amendments to the constitution as well as the previous actions of the Russian Federation including: non-execution of the ECtHR judgements, occupation of territories of the other member states of the Council of Europe: occupation of South Ossetia, Abkhazia and Crimea and the judgements of the constitutional court of Russia, explicitly shows the way of confrontation Russia has chosen. Whereas, the measures taken by the Council of Europe is insufficient and non-proportional to the level of the violation of its international obligations by Russia, therefore the change of the tactic used by the Council of Europe towards the Russian Federation is required.

CONCLUSION

The paper aimed to at first analyze the incompatibility between the article 46 of the ECHR and the revised constitution of the Russian Federation and secondly, taking into consideration the results of this analysys together with the actions of Russian Federation, and to check the adequacy and

⁹² Council of Europe. the Committee of Ministers. Interim Resolution CM/ResDH(2020)204. Execution of the judgment of the European Court of Human Rights. OAO Neftyanaya kompaniya Yukos against Russian Federation. 1383rd meeting of the Ministers' Deputies. October 2020

proportionality of the measures taken by the Council of Europe and to suggest the possible solutions for increasing the effectiveness of these measures.

After examining the both legislations, as well as the relationships between the international law, including ECHR and the domestic legislations of other states, as well as the relation of the national Constitutional courts and the ECtHR, it has been determined that: based on the incorporation clause found in the Constitution of Russia- the article 15(4), Russia is regarded as a monist state, therefore international treaties which Russia is the party of including the ECHR is the part of its legal system, however its place in the hierarchy of the laws is not explicit. As Russia is the party to the ECHR, it has to fulfil its international obligation and execute the judgements of the ECtHR in the light of the article 46 of the ECHR. Nevertheless, the recent amendments to the articles 79 and 125 of the Russian constitution giving the Constitutional Court of Russia the power to overrule the judgements of the ECtHR and declare them unenforceable in case of contradicting the constitution, which itself is a very broad term and gives the possibility for the various interpretations, were adopted in the name of protecting the constitution and the sovereignty of the state.

It can be concluded that these articles are explicitly incompatible with the article 46 of the ECHR and can be considered as an unlawful political decision of the Russian authorities, unwilling to obey the certain judgements of the ECtHR, as granting such a power to the Constitutional court of Russia to directly rule about the non-execution of judgement of the ECtHR even in case of the constitutional court having legitimate grounds for acting so, is against Russia's international obligations, as in case of the disagreement between the two bodies even in the countries where the constitution of the states takes precedence over the ECHR and constitutional courts have objections regarding the interpretation of the constitutional provisions, the mutual interests of ensuring the higher quality protection of human rights and the serving the best interests of the citizens should prevail and the courts should negotiate and try to find the best possible solution which is the common practice between the courts of other European countries and the ECtHR. Nevertheless, the current wording of the abovementioned amendments to the Russian constitution burnt all the bridges and made the cooperation impossible not leaving room for further negotiations between the two bodies.

As for the second aspect of the research question, it can be concluded that the actions and non-proportional measures taken by the Council of Europe, instead of being effective, encouraged Russia to go further in the violation of international obligations and norms including the recent amendments to the constitution and continuation of non-execution of the ECtHR

decisions. Therefore, the policy of appeasement of the aggressor which historically has not been successful, has to be overseen.

In authors opinion, for the purpose of protecting its reputation as a watchdog and safeguard of the democracy and the rule of law in its member countries and for eliminating the risks of the repetition of the violations of the same nature by other member states , the Council of Europe at first has to interdict the violation of its statute and use the proportional and adequate measures: namely call on Russian Federation to stop non-execution of the ECtHR judgements, to actively start the infringement proceedings regarding the all the judgements of the ECtHR Russia is evading to enforce, call on its member states and other international organizations like the EU and the NATO to increase peer pressuring on Russia and to impose even stricter sanctions. Furthermore, the Council of Europe shall take further measures in its competence such as depriving the Russian Federation of the right to vote in the PACE, restoration of which can be considered as an unconstructive act by the human rights watchdog, which in exchange of contribution fee pardoned and ignored serious violations of international norms by Russia.

LIST OF REFERENCES

Books

1. Bowring, B. (2018). Russia's cases in the ECHR and the question of implementation. In: Mälksoo, L., Benedek, W. (Eds.), *Russia and the European Court of Human Rights the Strasbourg Effect* (188-221). Cambridge: Cambridge University Press.
2. Dijk, P., Hoof, F., Rijn, A., Zwaak, L. (2018). *Theory and Practice of the European Convention on Human Rights*. Antwerp: Intersentia.
3. Filatova, M. (2016) The implementation of the European Convention on Human Rights and the European Court's case-law in the Russian legal order. In: Cozzi, A., Sykiotou, A., Rajska, D., Krstic, I., Filatova, M., Katic, N., Bard, P., Bourgeois, S., *Comparative study of the implementation of the ECHR at the national level* (107-126). Belgrade: Human Rights Friendly Judiciary.
4. Tsybulenko E., Francis J.A. (2018). Separatists or Russian Troops and Local Collaborators? Russian Aggression in Ukraine: The Problem of Definitions. In: Sayapin S., Tsybulenko E. (Eds.), *The Use of Force against Ukraine and International Law* (123-144). The Hague: T.M.C. Asser Press/Springer.
5. Tsybulenko E., Kelichavyi B. (2018). International Legal Dimensions of the Russian Occupation of Crimea. In: Sayapin, S., Tsybulenko E. (Eds.), *The Use of Force against Ukraine and International Law* (277-296). The Hague: T.M.C. Asser Press/Springer.

Articles

6. Aksenova, M., Marchuk, I. (2018). Reinventing or rediscovering international law? The Russian Constitutional Court's uneasy dialogue with the European Court of Human Rights. *International Journal of Constitutional Law*, 16(4), 1322-1346.
7. Barnard, M. (2015). Legal reception in the AU against the backdrop of the monist/dualist dichotomy. *The Comparative and International Law Journal of Southern Africa*, 48(1), 154-156.
8. Blankenagel, A. (2019). The Relationship between the European Court of Human Rights and the Constitutional Court of the Russian Federation: A Reply to Jeffrey Kahn. *European Journal of International Law*, 30(3), 961-969.

9. Brabandere, E. (2016). OAO Neftyanaya Kompaniya Yukos v. Russia (Eur. Ct. H.R.). *International Legal Materials*, 55(3), 474-495.
10. Busygina, I., Kahn, J. (2019). Russia, the Council of Europe, and “Ruxit,” or Why Non-Democratic Illiberal Regimes Join International Organizations. *Problems Of Post-Communism*, 67(1), 64.
11. Danilenko, G. (1999). Implementation of international law in CIS states: theory and practice. *European Journal Of International Law*, 10(1), 51-69.
12. Dederer, H. (2017). Import and Impacts of the ECHR and the Judgments of the ECtHR in the Russian and German Legal System. *Journal Of Siberian Federal University. Humanities & Social Sciences*, 10(6), 783.
13. Górski, M. (2018). Quo vadis, Russia? On the Country’s Recent Approach Towards Implementing Judgments of European Court of Human Rights. *Comparative Law Review*, 23, 151.
14. Jägers, N. M. C. P., Zwaak, L. (2008). The Russian federation and human rights: How should the council of Europe deal with the problems posed by its largest member state? *Netherlands Quarterly of Human Rights*, 26(1), 3-7.
15. Kleimenov, I. (2018). Judgment of the Constitutional Court of the Russian Federation no 12-P/2016: Refusal to execute judgments of ECHR or the search for compromise between Russian and international law. *Questions of International Law*, 1, 19.
16. Kodra, L. (2017). THE RELATIONSHIP BETWEEN INTERNATIONAL LAW AND NATIONAL LAW. *Global Journal of Politics and Law Research*, 6(1), 1-11.
17. Issaeva, M., Sergeeva, I., Suchkova, M. (2011). Enforcement of the Judgments of the European Court of Human Rights in Russia. *SUR International Journal on Human Rights*, 8(15), 70.
18. Mäger, K. (2016). Enforcing the Judgments of the ECtHR in Russia in Light of the Amendments to the Law on the Constitutional Court. *Juridica International*, 24, 20.
19. Petersen, N. (2012). Determining the Domestic Effect of International Law Through the Prism of Legitimacy. *Heidelberg Journal of International Law*, 72, 2-3.
20. Pomeranz, W. (2012). Uneasy Partners: Russia and the European Court of Human Rights, *HUMAN RIGHTS BRIEF* 19, 3, 19.
21. Tsybulenko, E., Platonova, A. (2019). Violations of Freedom of Expression and Freedom of Religion by the Russian Federation as the Occupying Power in Crimea. *TalTech Journal of European Studies*, 9(3), 134-147, 137.
22. Usenkov, I., Morozov, I. (2018). Enforceability of ECtHR Judgements in Russia: Alternatives of Interaction Between Jurisdictions. *SHS Web Of Conferences*, 50, 01192, 2.

23. Vaypan, G. (2014). Acquiescence Affirmed, Its Limits Left Undefined: the Markin Judgment and the Pragmatism of the Russian Constitutional Court vis-à-vis the European Court of Human Rights. *RUSSIAN LAW JOURNAL*, 2(3),131.
24. Velaers, J. (2016). Constitutional Versus International Protection of Human Rights: Added Value or Redundancy? The Belgian Case, in the Light of the Advisory Practice of the Venice Commission. *Revue interdisciplinaire d'études juridiques*, 2(2), 269.

EU and International Legislation:

25. Council of Europe. European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14. Rome. 4 November 1950.
26. United Nations. Vienna Convention on the Law of Treaties. Vienna. 23 May 1969.
27. Council of Europe. Statute of the Council of Europe: London, 5th May, 1949.

Other countries' legislation:

28. Constitution of Romania. Bucharest. 8 December 1991.
29. Constitution of the Russian Federation. Moscow. 25 December, 1993.
30. The Spanish Constitution: Fundamental laws of the state. Madrid. 29 December, 1972.
31. The State Duma. FEDERAL LAW NO. 101-FZ OF JULY 15, ON THE INTERNATIONAL TREATIES OF THE RUSSIAN FEDERATION. June 16, 1995.

Court decisions:

32. Anchugov and Gladkov v. Russia, nos. 11157/04 and 15162/05, 4 July 2013.
33. BVerfG (Federal Constitutional Court). Case 2 BvR 1481/04, Görgülü, 14 October 2004
34. Konstantin Markin v. Russia [GC], no. 30078/06, ECHR 2012 (extracts).
35. PROCEEDINGS UNDER ARTICLE 46 § 4 IN THE CASE OF ILGAR MAMMADOV v. AZERBAIJAN(GC), no. 15172/13, 29 May 2019.
36. The Judgement No. 21-II/2015. Constitutional court of Russian Federation. 14 July, 2015.
37. The Judgment No. 12-II/2016. Constitutional Court of the Russian Federation. 19 April, 2016.
38. The Judgment No. 1-II/2017. Constitutional Court of the Russian Federation. 19 January, 2017.

Other sources:

39. BBC News.(2019).Ukraine fury as Russia gets back Council of Europe voting rights, 25 June 2019. Retrieved from <https://www.bbc.com/news/world-europe-48755606>, 12 April 2021.
40. Bogush, G., Padskocimaite,A.(2019). Case Closed, but what about the Execution of the Judgment? The closure of Anchugov and Gladkov v. Russia. Retrieved from <https://www.ejiltalk.org/case-closed-but-what-about-the-execution-of-the-judgment-the-closure-of-anchugov-and-gladkov-v-russia/>, 20 April 2021.
41. Bondolfi, S. (2018). Put national law before international law? Other countries do. Retrieved from <https://www.swissinfo.ch/eng/directdemocracy/controversy-in-parliament-put-national-law-before-international-law--other-countries-do-/44154932>, 14 February 2021.
42. Bussararin Ericson, M. (2016). *The Execution of Judgements of the European Court of Human Rights*.(Masters’s thesis) Uppsala University Department of Law,Uppsala.
43. Council of Europe. The Venice Commission. Study No. 690/2012. ON THE IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS TREATIES IN DOMESTIC LAW AND THE ROLE OF COURTS. 100th plenary session.10-11 October 2014.
44. Council of Europe. The Venice Commission. INTERIM OPINION No. 832/2015. ON THE AMENDMENTS TO THE FEDERAL CONSTITUTIONAL LAW ON THE CONSTITUTIONAL COURT OF THE RUSSIAN FEDERATION. 106th Plenary Session.11-12 March 2016.
45. Council of Europe. The Venice Commission. Opinion No. 832 / 2016.RUSSIAN FEDERATION JUDGMENT No. 12-II/2016 OF 19 APRIL 2016 OF THE CONSTITUTIONAL COURT.6 May 2016.
46. Council of Europe. Parliamentary Assembly. Resolution 2133.Legal remedies for human rights violations on the Ukrainian territories outside the control of the Ukrainian authorities, 12 October 2016.
47. Council of Europe. The Venice Commission. Opinion No. 981/2020. ON THE DRAFT AMENDMENTS TO THE CONSTITUTION (AS SIGNED BY THE PRESIDENT OF THE RUSSIAN FEDERATION ON 14 MARCH 2020) RELATED TO THE EXECUTION IN THE RUSSIAN FEDERATION OF DECISIONS BY THE EUROPEAN COURT OF HUMAN RIGHTS, written procedure replacing the 123rd. plenary session. 18 June 2020.
48. Council of Europe. the Committee of Ministers. Interim Resolution CM/ResDH(2009)160. Execution of the judgment of the European Court of Human Rights. Hirst against the United Kingdom No. 2. 1072nd meeting of the Ministers’ Deputies. 1-3 December 2009.

49. Council of Europe. the Committee of Ministers. CM/Notes/1331/H46-35. Execution of the judgment of the European Court of Human Rights. Hirst against the United Kingdom No. 2. 1331st meeting of the Ministers' Deputies. 4-6 December 2018.
50. Council of Europe. the Committee of Ministers. Resolution CM/ResDH(2019)240. Execution of the judgments of the European Court of Human Rights Two cases against Russian Federation. 1355th meeting of the Ministers' Deputies. 25 September 2019.
51. Council of Europe. the Committee of Ministers. Execution of the judgments of the European Court of Human Rights. Interim Resolution CM/ResDH(2020)47. Ilgar Mammadov group against Azerbaijan. 1369th meeting of the Ministers' Deputies. 5 March 2020.
52. Council of Europe. the Committee of Ministers. Execution of the judgment of the European Court of Human Rights. McFarlane against Ireland. Interim Resolution. CM/ResDH(2020)202. 1383rd meeting of the Ministers' Deputies. October 2020.
53. Council of Europe. the Committee of Ministers. CM/Notes/1383/H46-19. Execution of the judgments of the European Court of Human Rights. OAO Neftyanaya kompaniya Yukos against Russian Federation. 1383rd meeting, 29 September – 1 October 2020 (DH)
54. Council of Europe. The Committee of Ministers. DEPARTMENT FOR THE EXECUTION OF JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS. Country Factsheet. Russia.
55. Council of Europe. (2020). Department for the Execution of Judgments of the Court. News. Retrieved from <https://www.coe.int/en/web/execution/-/azerbaijani-supreme-court-acquits-human-rights-defenders-to-execute-the-european-court-s-judgments>, 25 March 2021.
56. Donald, A., Gordon, J., Leach, P. (2012). The UK and the European Court of Human Rights Research Report 83. Manchester: Equality and Human Rights Commission, 24.
- Adams, E. (2019). Prisoners' Voting Rights: Case Closed? Retrieved from <https://ukconstitutionallaw.org/2019/01/30/elizabeth-adams-prisoners-voting-rights-case-closed/>, 5 April 2021.
57. Erlanger, S. (2019). Council of Europe Restores Russia's Voting Rights. Retrieved from <https://www.nytimes.com/2019/06/25/world/europe/council-of-europe-russia-crimea.html>, 12 April 2021.
58. European Court of Human Rights. Press country profile. Russia.
59. HINES, J.H. et al. (2020). RUSSIA ADOPTS MAJOR AMENDMENTS TO ITS CONSTITUTION. Lawflash. Morgan Lewis. Retrieved from <https://www.morganlewis.com/pubs/2020/07/russia-adopts-major-amendments-to-its-constitution>, 15 April 2021.

60. Hugh Williamson, Nicola Duckworth, Souhayr Belhassen. (2011). Letter to President Medvedev regarding ECHR legislation. Retrieved from <https://www.hrw.org/news/2011/08/12/letter-president-medvedev-regarding-echr-legislation>, 1 April 2021.
61. International Commission of Jurists. (2020). Briefing Paper on Certain Amendments to the Constitution of the Russian Federation. Retrieved from <https://www.icj.org/russian-federation-constitutional-amendments-undermining-human-rights-protection-should-be-withdrawn/>, 4 April 2021.
62. JAM news.(2019). “The shame of European diplomacy” – why PACE voting rights were given back to Russia. Retrieved from <https://jam-news.net/the-shame-of-european-diplomacy-why-pace-membership-was-retained-to-russia/>, 12 April 2021.
63. Kolb, R. (2018). Relationship between international and internal law. Retrieved from https://baripedia.org/wiki/Relationship_between_international_and_internal_law, 14 February 2021.
64. MOUNIER, J.L.(2019). Russia's undiplomatic return to the Council of Europe. Retrieved from <https://www.france24.com/en/20190628-russia-undiplomatic-return-council-europe-ukraine>, 12 April 2021.
65. Netherlands Helsinki Committee.(2019). Russia’s Continuation in the Council of Europe: Challenges and Chances for Human Rights. Retrieved from <https://www.nhc.nl/russia-and-council-of-europe-challenges-chances/>, 12 April 2021.
66. Protocol No. 14bis to the Convention for the Protection of Human Rights and Fundamental Freedoms, Explanatory Report, 2009.
67. Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements (adopted by the Committee of Ministers on 10 May 2006 at its 964th meeting and amended on 18 January 2017 at its 1275th meeting).
68. Saunders, C. (2020). Constitutions and International Law. International IDEA Constitution Brief. *The International Institute for Democracy and Electoral Assistance*. Retrieved from <https://www.idea.int/sites/default/files/publications/constitutions-and-international-law.pdf>, 13 February 2021.
69. Strasbourg observers.(2017). Retrieved from <https://strasbourgoobservers.com/2017/12/20/the-committee-of-ministers-goes-nuclear-infringement-proceedings-against-azerbaijan-in-the-case-of-ilgar-mammadov/#more-4075>, 25 March 2021.
70. THE CONVERSATION.(2020). Vladimir Putin secures constitutional changes allowing him to rule until 2036 – what this means for Russia. Retrieved from <https://theconversation.com/vladimir-putin-secures-constitutional-changes-allowing-him-to-rule-until-2036-what-this-means-for-russia-141103>, 15 April 2021.

71. Verfassungsblog ON MATTERS CONSTITUTIONAL.Timofeev,M.(2017,January 26)Money Makes the Court Go Round: The Russian Constitutional Court's Yukos Judgment.[Blog post]. Retrieved from <https://verfassungsblog.de/money-makes-the-court-go-round-the-russian-constitutional-courts-yukos-judgment/>, 3 April 2021.

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