



Kyiv, 16 February, 2016

## RUSSIA'S IGNORING OF EUROPEAN COURT OF HUMAN RIGHTS DECISIONS

**Russia is one of the leaders in terms of the overall number of registered applications it has filed against it in the European Court of Human Rights. In December 2015, Russia adopted legislative amendments which means that decisions issued by the ECHR and other international courts are not enforced.**

In 2014, 8,952 complaints against Russia were registered in the ECHR and in 2013, the number reached 12,328. The only country that had more applications filed against it than Russia in 2014 was Ukraine, with a total of 14,198.

In 2014, in respect of Russia, the ECHR recorded the largest number of violations of the right to liberty and security of person (56), the right not to be subjected to inhuman and degrading treatment (50, not including procedural violations and violations related to deportations/extraditions), the right to effective domestic means of legal protection from presumed violations of other rights (30), the right to a fair trial (24), not including excessive durations of trials and lengthy non-enforcement of judicial acts).<sup>1</sup>

In 2015, Russia became the leader among all countries with regard to the number of violations of human rights conventions - the ECHR established the presence of such violations in 109 complaints regarding Russia.<sup>2</sup>

The most well-known ECHR verdicts in cases against Russia:

- **The death of civilians in Chechnya.** A number of inhabitants of Chechnya managed to bring Russia to account for the deaths of civilians during the so-called counter-terrorist operation with the aim of preserving the republic within the composition of the RF. There are in excess of two hundred 'Chechen cases' being dealt with by the ECHR.
- **Khodorkovsky and the YUKOS case.** A court adopted a decision ordering Russia to pay 1.86 bln euros in compensation to YUKOS company shareholders.
- **The storming of the centre on Dubrovka and the school in Beslan.** In 2012, the ECHR decided that the decision on the storming had been justified, as had been the use of special means and gas. However, it did agree with the plaintiffs that the Russian military and security forces had committed a violation in the planning and execution of the assault and ordered the Russian authorities to pay between 9 thousand and 66 thousand euros to each of the 64 plaintiffs.

One of the most eagerly awaited decisions of the court in Strasbourg may be the analogous case of 'Tagayeva and Others v. Russia' – a class action filed by a combined total of 447 Russian citizens who suffered damages resulting from the capture of hostages by terrorists in the Beslan

<sup>1</sup> <http://europeancourt.ru/statistika-evropejskogo-suda/>

<sup>2</sup> <http://www.novayagazeta.ru/news/1699744.html>

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school in September of 2004. In the summer of 2015, the ECHR found the majority of the applications to be admissible. A verdict is expected in 2016.<sup>3</sup>

- **Military aggression against Ukraine.** Presently, more than 500 applications from residents of Ukraine on violations of their rights during the time of the RF's aggression have already been deemed admissible by the ECHR.<sup>4</sup>

On 15 December, 2015, Vladimir Putin signed amendments to the Federal Law 'On the Constitutional Court of the RF'. According to the amended law, the Constitutional Court of the RF now has the power to adopt decisions on the impossibility of enforcing decisions of an inter-state organ for the protection of human rights and liberties (first and foremost the ECHR) should they contradict the Constitution of the RF.

Russia has thereby abrogated the priority of international law over domestic law and has given itself the opportunity to avoid enforcing ECHR decisions.

### CRITICISM OF ECHR PRACTICE IN RUSSIA

Representatives of Russia's high-level authorities have repeatedly expressed their dissatisfaction regarding ECHR decisions.

**Vladimir Putin:** *"It [the European Court—ed.] does not regulate legal relations, does not protect rights, but simply executes some kind of political function. One of the most prominent examples — when they imposed some kind of fine on Russia, on Transdnistria. We had no relation to this at all — they were holding a person in prison over there in Transdnistria, yet Russia had some sort of fine imposed on it for this. Utter nonsense! it was absolutely not a decision based on law, yet this did take place"*<sup>5</sup> (15 August, 2014).

**Alexey Pushkov** (Head of the committee of the State Duma of the RF for international affairs): *"If a dispute arises between the understanding of the legislation of the RF and those decisions that are adopted abroad, then perhaps it makes sense to look and see what agreements ratified by the RF do not correspond to the current notion about Russian international obligations... Changing the Constitution to realign priorities is not necessarily required, it is sufficient to adopt constitutional laws revoking the validity of international agreements ratified by Russia... It is perfectly realistic to limit ECHR decisions on the territory of the RF to those that do not contradict our legislation"*<sup>6</sup> (2 March, 2015).

**Alexander Bastrykin** (Head of the Investigative Committee of the RF): *"The ECHR, from my point of view, hyperbolises excessively and, I would even say... without sufficient grounds, absolutises the significance of international law when examining concrete cases it is charged with dealing with. It is precisely for this reason that, not infrequently, fierce legal conflicts arise in practice and especially in the process of enforcing ECHR decisions. The consequence of this is the unwillingness of states to enforce its decisions. It seems to me that, when examining applications, ECHR judges devote an insufficient degree of attention to analysis of the specifics of the domestic legislation of the corresponding countries, their foundations and first and foremost constitutional, base provisions, legal traditions, peculiarities and finally the legal ideology and legal psychology that has taken shape in that state or another state. Unfortunately, legal dogmatism, as it were, predominates"*<sup>7</sup> (23 July, 2015).

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<sup>3</sup> <http://www.dw.com/ru/7-%D1%81%D0%B0%D0%BC%D1%8B%D1%85-%D0%B2%D0%B0%D0%B6%D0%BD%D1%8B%D1%85-%D0%B4%D0%B5%D0%BB-%D0%B5%D1%81%D0%BF%D1%87-%D0%BF%D1%80%D0%BE%D1%82%D0%B8%D0%B2-%D1%80%D0%BE%D1%81%D1%81%D0%B8%D0%B8/a-18888744>

<sup>4</sup> <http://zib.com.ua/ru/117509-minyust-prokomentiroval-otkaz-rf-vipolnyat-resheniya-espch.html>

<sup>5</sup> <http://putininfo.com/2121-putin-o-evropejskom-sude-po-pravam-cheloveka/>

<sup>6</sup> <http://www.kommersant.ru/doc/2678066>

<sup>7</sup> <http://m.rg.ru/2015/07/23/bastrykin-site.html>

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**Valery Zorkin** (Chairman of the Constitutional Court of the RF): *“There is, in our life, much that is good and much that is bad too... Life forces us to adopt new decisions... Which is not to say we should call black white!... It’s just that life changes, and this needs to be taken into account! Yes, in some instances ECHR decisions may be revoked in the capacity of execution. But in what instances? When the Constitution of the RF better protects the rights of citizens!”*<sup>8</sup> (14 December, 2015).

**Alexey Kravtsov** (Chairman of the Commercial Arbitration Tribunal of the city of Moscow): *“The court’s decision only illustrates the mood among the public and, to an extent, among the elites: Russian people don’t want to fulfil the ECHR’s decisions, including with regard to the Yukos case”*.<sup>9</sup>

**Konstantin Dolgov** (MFA RF Ombudsman for Human Rights): *“I am convinced that, in practice, this is going to affect a very insignificant percentage of ECHR decisions. Because, if this is going to affect a larger percentage of ECHR decisions, then we shall need to seek out the root of the problem, in first order, within the framework of the ECHR. Why are decisions being adopted by the court which contradict the principles, so to speak, of one of the most democratic constitutions?”*<sup>10</sup> (18 December, 2015).

**Sergey Naryshkin** (Speaker of the State Duma of the RF): *“Russia did not transfer to this, or to any other transnational body, the right to revise our Constitution. Still, our motivation was driven by the fact that, in our opinion, individual ECHR decisions can be regarded specifically as, as I have said, entering into contradiction with the fundamental law of the RF”*<sup>11</sup> (18 January, 2016).

**Russia is the leader with regard to the number of cases of violations of human rights among all European countries. With the tightening of the authoritarian regime, the number of violations will only increase. In the coming years, a large number of ECHR judgments relating to the occupation of the Crimea and the military aggression against Ukraine is also expected. The cancellation of the prevalence of international law over domestic law – is nothing but an attempt to evade responsibility for these crimes.**

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<sup>8</sup> <http://www.kommersant.ru/doc/2877575>

<sup>9</sup> <http://www.independent.co.uk/news/world/europe/vladimir-putin-signs-law-allowing-russian-court-to-overthrow-international-human-rights-rulings-a6773581.html>

<sup>10</sup> <http://tass.ru/politika/2540753>

<sup>11</sup> <http://ria.ru/politics/20160118/1361505645.html>