LEGITIMACY AND JUDICIAL PROTECTION OF HUMAN RIGHTS AND CHILDREN'S RIGHTS IN RUSSIA

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University of Bergen, Norway,
June 13th, 2019
STRUCTURE

1. Brief overview of the Russian human rights and child protection system: regulations and statistics

2. “Hot points”

3. Russia and ECtHR

4. Legitimacy and political motivation of the Russian Constitutional Court’s decisions
I. OVERVIEW OF THE RUSSIAN HUMAN RIGHTS AND CHILD PROTECTION SYSTEM
I. INTERNATIONAL LEVEL

1. Universal Declaration of Human Rights (1948)

   + International Covenant on Civil and Political Rights (1966)
   + International Covenant on Economic, Social and Cultural Rights (1966)

II. NATIONAL LEVEL


2. Federal laws

3. Decrees and Orders of the President of the Russian Federation

4. Regional laws
REGULATIONS AND SOURCES OF LAW: PROTECTION OF RIGHTS OF CHILDREN

1. INTERNATIONAL LEVEL


REGULATIONS AND SOURCE OF LAW: PROTECTION OF RIGHTS OF CHILDREN

II. NATIONAL LEVEL
2. Federal laws:
   - Civil Code
   - Family Code
   - Federal law “On Additional Guarantees for Social Support for Orphans and Children Left Without Parental Care” (1996), etc.
REGULATIONS AND SOURCE OF LAW: PROTECTION OF RIGHTS OF CHILDREN

II. NATIONAL LEVEL
3. Decrees of the President:
The National Strategy for Protecting the Interests of Children 2012-2017;
The National Strategy for the Protection of Family Rights until 2025;

4. Decree of the Government of the Russian Federation:
Decade of childhood from 2018 to 2027.
RUSSIAN HUMAN RIGHTS PROTECTION SYSTEM

**International level**
The European Court of Human Rights (ECtHR)

**National level**

**Judicial protection**
- The Constitutional Court of the Russian Federation
- The Supreme Court of the Russian Federation
- Courts of general jurisdiction

**Non-judicial protection**

**Administrative**
- Law enforcement agencies
- Prosecutor's office
- The Human Rights Ombudsman

**Non-government organizations**

If doesn’t work

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International level
The European Court of Human Rights (ECtHR)
### Cases concerning

<table>
<thead>
<tr>
<th>Cases concerning</th>
<th>Number of decisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>- the dissolution of marriage of spouses with children</td>
<td>440453</td>
</tr>
<tr>
<td>- the recovery of alimony for the maintenance of minor children</td>
<td>320835</td>
</tr>
<tr>
<td>- deprivation of parental rights</td>
<td>53123</td>
</tr>
<tr>
<td>- Issues of raising children</td>
<td>34954</td>
</tr>
<tr>
<td>- establishing paternity</td>
<td>18939</td>
</tr>
<tr>
<td>- the restriction of parental rights</td>
<td>8740</td>
</tr>
<tr>
<td>- the restoration of parental rights</td>
<td>3432</td>
</tr>
<tr>
<td>- to the exercise of their rights by minors</td>
<td>666</td>
</tr>
<tr>
<td>- the revocation of the adoption of children</td>
<td>512</td>
</tr>
<tr>
<td>- the return of the child or the exercise of access rights to the child on the basis of an international treaty of the Russian Federation</td>
<td>70</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>881724</strong></td>
</tr>
</tbody>
</table>

Source: Judicial Statistic Department of the Supreme Court of Russia
II. “HOT POINTS”
HOT POINTS OF HUMAN RIGHTS PROTECTION

- Politically motivated legal investigations, penalties, killings
- Censorship
- Limitation of political rights
- Preventing the functioning of NGOs
- Violations of human rights in national republics (for example, Chechnya)
HOT POINTS OF CHILDREN RIGHTS PROTECTION

- Adoption by people with “special” status
- Religious education
- Informational protection – restrictions for media
- Domestic violence
- Social care for children with disabilities
1. Divergence between declared and empowered politics regarding children’s rights protection

Declared priority: the interests of the child
Actual priority:
- priority of mothers’ interests;
- promotion of “traditional” families and values

2. Using child protection system as a political instrument:
- for the purposes of integration into the international system
- creation of the image of a law-oriented state
- implementing unpopular measures – politicization of child-protection system
“DIMAYAKOVLEV’S CASE”
Russian boy adopted by American citizen Miles Harrison (Virginia)

Dima was dead 3 months after the adoption, having been accidentally locked inside his adoptive father's car on a hot day.

Under US law, his adoptive father Miles Harrison was threatened with up to 10 years in prison for unintentional murder (manslaughter) but on December 17, 2008 he was fully acquitted by a US court.
(adopted on December 21, 2012)

1) the adoption of Russian children by US citizens is banned

2) a list of 60 banned-entry US citizens:
   • Americans who have violated the rights of children adopted from Russia;
     and +
   • judges, agents and representatives of special services, prosecutors involved - authors of the Magnitsky Act (US, 2012).
3) The Ministry of Justice of Russia may **suspend the activities of non-profit organizations (NPOs)** that:

- participate in political activities in the territory of Russia and
- receive money or property of citizens or organizations of the USA or
  - carry out activities on the territory of Russia which represent a threat to the interests of Russia.

3) limit the ability of persons with both citizenship of the Russian Federation and the United States to work for or to lead NPOs participating in political activities.
1) Direct regulation of the issue of adoption;

2) A response to US sanctions and the "Magnitsky act."


3) It created certain restrictions on the activities of civil society in Russia.
2012 “Foreign agent” law:

- all NGOs receiving funding from abroad
- restrictions and special control

2015 Law on “undesirable organizations”

- out-of-court procedure to prohibit the activities of any foreign organizations whose activities are considered to "threaten the foundations of the constitutional order, the country's defense or security"
The Moscow Helsinki Group

the oldest human rights organization in Russia, established in the late 1970s, when both UN international human rights pacts, ratified by the USSR, came into force.

The Vote (GOLOS)

is a Russian organization that monitors elections, fixes violations, and also helps to appeal the results of elections.

Transparency International Russia

which deals with issues of corruption and even gave independent reports on corruption in Russia by order of the Government.
IVAN GOLUNOV’S CASE (2019)
In Moscow, more granite is laid every year than is produced annually in the whole of Russia. Because of this, in Siberia, there is a shortage of stone for gravestones. Who is earning from Moscow pavements and curbs?

A coffin, a cemetery, hundreds of billions of rubles. How officials, security forces and bandits divide the funeral market?

Moscow needs to get rid of six million tons of garbage. To which regions it will be brought and who will transport it?

One extremely happy village. How do Vyacheslav Volodin's relatives beautify villages, earn money on mayonnaise and become holy?
June 6  Ivan Golunov was detained in the center of Moscow on suspicion of possession and attempting to sell drugs, and his apartment was searched.

June 7  fabricated photos of drugs allegedly found in Golunov’s Moscow apartment were published on the official website of the Ministry of Internal Affairs.

June 7-9  single pickets in Moscow and other cities, massive publications by and speeches from public figures and human rights organizations.

June 8  first success - house arrest as a preventive measure instead of guards.

June 10  most authoritative press and media have a similar main page ”I-We - Ivan Golunov”

June 10  the Ombudsman on Human rights meet President Putin and is informed about the case
Мы Иван Голунов Мы Иван Голунов Мы Иван Голунов
June 11 - the Minister of the Interior announced:
“The criminal case of the special correspondent Ivan Golunov on Medusa was discontinued“ due to the lack of evidence of guilt”, and Ivan Golunov himself will be released from house arrest”

June 11 - police officers who detained Ivan, the Head of the Department for control over drug trafficking and Head of the Investigation Department of the Moscow West District Internal Affairs Directorate were fired from their posts

June 11 – Ojub Titiev, Russian human rights activist, head of the Grozny (Chechnya) representative office of the human rights center "Memorial", a political prisoner who had been imprisoned under similar circumstances in January 2019, was released.
III. RUSSIA AND ECTHR
## ECTHR STATISTICS: CLAIMS

### Total up to 2018

<table>
<thead>
<tr>
<th>Member of EC</th>
<th>Year of membership in the European Council</th>
<th>Number of decisions recognizing a violation of human rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>Turkey</td>
<td>1949</td>
<td>3128</td>
</tr>
<tr>
<td>Russia</td>
<td>1996</td>
<td>2365</td>
</tr>
<tr>
<td>Italy</td>
<td>1949</td>
<td>1830</td>
</tr>
<tr>
<td>Ukraine</td>
<td>1995</td>
<td>1274</td>
</tr>
<tr>
<td>Romania</td>
<td>1993</td>
<td>1273</td>
</tr>
<tr>
<td>Poland</td>
<td>1991</td>
<td>978</td>
</tr>
<tr>
<td>Greece</td>
<td>1949</td>
<td>894</td>
</tr>
<tr>
<td>France</td>
<td>1949</td>
<td>736</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>1992</td>
<td>615</td>
</tr>
<tr>
<td>Hungary</td>
<td>1990</td>
<td>438</td>
</tr>
</tbody>
</table>

### 2018

<table>
<thead>
<tr>
<th></th>
<th>Number of decisions at least one violation recognized</th>
<th>Total complaints</th>
</tr>
</thead>
<tbody>
<tr>
<td>Russia</td>
<td>238</td>
<td>248</td>
</tr>
<tr>
<td>Turkey</td>
<td>140</td>
<td>146</td>
</tr>
<tr>
<td>Ukraine</td>
<td>86</td>
<td>91</td>
</tr>
<tr>
<td>Romania</td>
<td>71</td>
<td>82</td>
</tr>
<tr>
<td>Hungary</td>
<td>35</td>
<td>38</td>
</tr>
</tbody>
</table>

13th of June, 2019
Olga Komshukova
<table>
<thead>
<tr>
<th>Member of EC</th>
<th>The number of complaints to the ECtHR per 10 thousand population</th>
<th>Population, in millions</th>
<th>Number of complaints in 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Montenegro</td>
<td>5,11</td>
<td>0,6</td>
<td>318</td>
</tr>
<tr>
<td>2 Serbia</td>
<td>3,04</td>
<td>7</td>
<td>2128</td>
</tr>
<tr>
<td>3 Bosnia and Herzegovina</td>
<td>2,56</td>
<td>3,5</td>
<td>898</td>
</tr>
<tr>
<td>4 Moldova</td>
<td>2,29</td>
<td>3,5</td>
<td>814</td>
</tr>
<tr>
<td>5 Romania</td>
<td>1,73</td>
<td>19,5</td>
<td>3369</td>
</tr>
<tr>
<td>6 Croatia</td>
<td>1,63</td>
<td>4,1</td>
<td>669</td>
</tr>
<tr>
<td>7 Lithuania</td>
<td>1,56</td>
<td>2,8</td>
<td>438</td>
</tr>
<tr>
<td>8 Macedonia</td>
<td>1,47</td>
<td>2,1</td>
<td>305</td>
</tr>
<tr>
<td>9 Latvia</td>
<td>1,34</td>
<td>1,9</td>
<td>259</td>
</tr>
<tr>
<td>10 Slovenia</td>
<td>1,33</td>
<td>2,1</td>
<td>274</td>
</tr>
<tr>
<td>16 Russia</td>
<td>0,85</td>
<td>143,7</td>
<td>12148</td>
</tr>
<tr>
<td>17 Turkey</td>
<td>0,83</td>
<td>80,8</td>
<td>6717</td>
</tr>
<tr>
<td>18 Slovakía</td>
<td>0,72</td>
<td>5,4</td>
<td>390</td>
</tr>
<tr>
<td>19 Ukraine</td>
<td>0,71</td>
<td>45,2</td>
<td>3207</td>
</tr>
</tbody>
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For comparison:

<table>
<thead>
<tr>
<th></th>
<th>Number of complaints</th>
<th>Population in millions</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Europeans average</td>
<td>0,52</td>
<td>833</td>
<td>43075</td>
</tr>
<tr>
<td>Norway</td>
<td>0,16</td>
<td>5,3</td>
<td>84</td>
</tr>
<tr>
<td>France</td>
<td>0,13</td>
<td>67,2</td>
<td>871</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>0,05</td>
<td>66,2</td>
<td>354</td>
</tr>
</tbody>
</table>

Source: https://www.echr.coe.int/Documents/Annual_report_2018_ENG.pdf
COURT’S STATISTICS: VIOLATIONS OF RIGHTS

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Number of cases against Russia in 2018 via violated rights

- Inhuman/degrading treatment: 99
- Right to liberty and security: 99
- Right to an effective remedy: 67
- Right to fair trial: 46
- Protection of property: 36
- Respect for private and family life: 26

Number of cases against Russia in 1998-2018 via violated rights

- Right to liberty and security: 1031
- Right to fair trial: 820
- Inhuman/degrading treatment: 818
- Protection of property: 629
- Right to an effective remedy: 590
- Lack of effective investigation: 324
- Right to life: 290
- Length of proceedings: 204
- Lack of effective investigation: 199
- Respect for private and family life: 198

Source: https://www.echr.coe.int/Documents/Annual_report_2018_ENG.pdf
AVERAGE AMOUNT of compensation

€ 18 600

https://www.rbc.ru/society/24/01/2019/5c496999a794737eaf9a74
KONSTANTIN MARKIN V. RUSSIA (2010)
THE ISSUE:

the Constitutional Court of Russia considered as constitutional, legal norms which forbid to have parental leave to male soldiers, because:

- they are obliged to perform the “duty to protect the Fatherland”
- this is a “traditional” issue of the Russian army

ECtHR resolution:

1) violation of the rights and freedoms of a person and citizen and discrimination against male military personnel

Source: http://hudoc.echr.coe.int/eng?i=001-72954
THE RESOLUTION OF RUSSIAN CONSTITUTIONAL COURT DATED 14 JULY, 2015
THE ISSUE:

the consequences of a hypothetical contradiction between the decision of the ECtHR and Russian Constitution

RESULTS:

1) The Russian Constitution prevails over the norms of international law - the principle of "state sovereignty";

2) it is possible to refuse execute an ECtHR decision by a decision of the Constitutional Court (if it contradicts the Constitution).
THE REFUSAL TO ENFORCE OF DECISIONS:

1) The case of “Anchugov and Gladkov v. Russia“

*ECtHR Judgment, 04.07.2013*

ECtHR found it illegal to deprive the active electoral rights of Russian convicts.

2) The “YUKOS v. Russia” case

*ECtHR Judgment, July 31, 2014*

ECtHR ordered Russia to pay YUKOS shareholders 1 billion 866 million euros.
YUKOS CASE

- YUKOS is a Russian oil company
- It belonged to the influential oligarch Mikhail Khodorkovsky in the 90s.

- Charged with tax optimization fraud, Khodorkovsky was in jail for over 10 years (2003-2013)

- The case was considered to be extremely politicized.

- Amnesty International awarded him the status of a “prisoner of conscience”.

Photo source: https://24smi.org/celebrity/792-mikhail-khodorkovski.html
2014 March  Crimean crisis
2014 –present  US and European sanctions
2014  Deprivation of authority of Russian delegation
2014  "YUKOS case" decision
2015 July  the Resolution of the Russian Constitutional Court
2016  the Venice Commission of the Council of Europe criticized the Resolution
2017  refusal of enforcement of YUKOS decision
2017  Russia suspended payments and refused to form the delegation to the Council
2019 June  deadline for Russia to make a payment (otherwise?!)
IV. LEGITIMACY OF RUSSIAN COURT DECISIONS
- Thinking about “symbolic” decisions of the Russian Constitutional Court

- What are mechanisms for legitimization?

- What is the role of the Russian Constitutional Court?
ANALYSIS OF THE CASE INCLUDES:

• analysis of the arguments of the Court;

• comparison of the reasoning (motivation) with the doctrinal position and judicial practice in similar cases;

• review of the perception of the press, the scientific community and political actors of the decision;

• comparison of political vs legal arguments;

• testing the technique (questionnaire) for case analysis.

Methods: content and discourse analysis
FOR LEGITIMACY:

Inside the decision:

• Appeal to rationality, efficiency, benefit;
• Appeal to the "authority»;
• Appeal to traditional values, “collective morality”, historical, cultural peculiarities;
• Appeal to the "pathos" - emotions, experience, feelings;
• References to the political situation, a specific historical moment;
• References to sources of law are not correct and/or not explained.

Outside the decision: explanations in mass media.
1) The prevailing type of political culture is ”the subject culture”* (terminology of Almond and Verba)

*where citizens are aware of central government, and are heavily subjected to its decisions with little scope for dissent

2) Weak development of civil society institutions

3) Low level of legal awareness and lack of tradition of the protection of rights
Thank you for your attention!
CASE OF AGYEYEVY V. RUSSIA (2013)
THE ISSUE:
the sudden removal of adopted children, the revocation of the adoption and the continued lack of access to the children

ECtHR resolution:
1) violation of parents’ rights by decision to revoke the adoption of the applicants’ children;
2) violation of parents’ rights due to inability to review the authorities’ position concerning access to the children;
3) 55 000 euro as compensation

ENFORCEMENT:
- compensation paid
- decision was not reviewed
- children still under state care

Source: http://hudoc.echr.coe.int/eng?i=001-118602