VYACHESLAV V. GAVRILOV
& VICTORIA V. SUBOCHEVA
(Far Eastern Federal University, Vladivostok, Russian Federation)

The Work of the European Court of Human Rights and the Execution of Its Judgments in the Context of Poverty Reduction

1. INTRODUCTION

The normative basis for the protection of human rights, both at the national and international levels, has been greatly developed during the last sixty years, since the time when the Universal Declaration of Human Rights was adopted, back in 1948. Most national constitutions, international treaties and consuetudinary law now include specific human rights from the Declaration and develop them, providing them with due protection. Additionally, we have also been able to observe the creation of a network of institutions aimed at protecting human rights, at different levels, among which special courts play the most important role.

However, and despite this significant development of international human rights law, at present time statistics on human rights violations still present some troubling figures, especially when the rights of poorest part of population are concerned. As the United Nations has stated, extreme poverty keeps about a quarter of the world's population «from enjoying basic human rights by denying them the basic elements needed for a life of dignity and freedom, including food, shelter, health care, clothing and personal security, and by limiting their options in life». [1] However, the problem is not only that poverty brings human rights violations: the relationship between these two factors can indeed be reversed, as on the other hand, human rights violations cause poverty. As Norah Niland, Representative of the UN High Commissioner for Human Rights in Afghanistan,

[1] See the official website of the United Nations Population Fund, available at *www.unfpa.org/rights/poverty.htm* (last visited: 12 September 2010).

fairly notes, «poverty is neither accidental, nor inevitable; it is both a cause and a consequence of a massive human rights deficit». [2]

Though states have proposed different approaches to the determination of the poverty line (quite frequently, depending on the level of life in each state) [3] and subsequently the percentage of the population falling below the poverty line is different, [4] it can be argued that in every society poverty has always been considered as a social phenomenon that characterizes an economical state of an individual or a group of individuals when he/she/they does/do not possess sufficient material resources to satisfy his/her/their daily living necessities.

Though poverty is *prima facie* connected with material considerations, in the final analysis the protection of economic rights (material rights) is far from being the only mean for poverty reduction. Poverty is a consequence of many different interrelated causes: while some are basically economical (like unemployment or low salaries), some others are medical (like disability, old age, high level of disease incidence), legal (low level of social guarantees), demographical (incomplete families, large number of dependents in the family), or even political (internal conflicts, forced migrations), etc. [5] Hence, not only the violation of economic

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2 *Human Rights Abuses Exacerbating Poverty in Afghanistan, UN Report Finds.* UN News Center, 30 March 2010, available online at: *www.un.org/apps/news/story.asp?Cr=afghan&Cr1=& NewsID=34239* (last visited: 9 September 2010).

3 It is universally assumed that individuals whose income has fallen below a certain amount of money are considered as living below the poverty threshold. However, this threshold is defined differently and established at different levels from country to country. For example, Russia introduced the term «minimum living wage» to define the poverty threshold. According to the RF Federal Law «On Minimum Living Wage» (No. 137-FZ dated 24 October 1997 with subsequent amendments) minimum living wage is a cost estimate of a consumer basket, and also obligatory payments and collections, whereas a consumer basket is a minimal selection of foodstuffs, non-food goods, and services, necessary for maintenance of health of a human and his living activities. The 2010 living minimum wage for working people in Russia in general is established at the rate of 5,956 Rubles (equivalent approximately to USD 199) per month. As to the United States, the Census Bureau's poverty thresholds form the basis for statistical estimates of poverty in the country. The thresholds reflect crude estimates of the amount of money individuals or families of various size and composition, need per year to purchase a basket of goods and services deemed as «minimally adequate». In 2009 the poverty threshold in the US for a single person under 65 was USD 11,161 per year; while the threshold for a family group of four, including two children, was USD 21,756. (See: Thomas Gabe: *Poverty in the United States: 2008*, Congressional Research Service, April 21, 2010, available online at: *http://opencrs.com/document/RL33069/* (last visited: 19 August 2010); and also *http://www.census.gov/hhes/www/poverty/threshld/thresh09.html* (last visited: 6 September 2010).

4 As of 2007, for example, the percentage of population below the poverty line in the USA was 12.5 %; in Cambodia, 30.1 %; in Tajikistan, 53.5 %; and in the Dominican Republic, 48.5 % (see: Thomas Gabe: *Poverty in the United States…,* cit., and UNSTATS web-site, available online at: *http://mdgs.un.org/unsd/mdg/Data.aspx* (last visited: 12 September 2010).

5 V. N. Bobkov, V. G. Zinin & A. A. Razumov: «Politica dokhodov i zarabotnoi platy [Policy of income and salary]», *Doklad v ramkakh proekta MOT "Preodolenie bednosti, sodeistvie zanyatosti i mestnoe ekonomicheskoe razvitie v Severo-Zapadnom federal'nom okruge"* [*Report within the*

rights, but also the ignorance of civil, social, political and other rights (at different levels) may influence the material position and the living conditions of individuals, and end up in poverty. For this reason poverty is not considered any more as a simple lack of income, but also –in a much broader sense– as a limitation of the free enjoyment of human rights. According to the UN Committee on Economic, Social and Cultural Rights, poverty may be defined as

> «[A] human condition characterized by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights».[6]

Therefore, it is necessary to fully ensure human rights of both the first (civil and political) and the second generations (social and economic) in order to influence in the reduction of poverty levels. From this perspective the most important among social and economic rights are, in our opinion, the right to property protection, the right to housing, the right to health, the right to education, the right to labor, and the right to social and medical services. Additionally, the right to life, equal protection of the law, the right to a fair trial, etc. are specifically noted among the most relevant civil and political rights.

As many authors have noted, in spite of the huge development of the international law of human rights, many rights still remain declaratory in their nature, especially the social ones. [7] This situation is especially terrible in relation to poor people. In this connection a substantial increase of the level of achievement of economic and social guarantees for poor people should become the major goal in many countries. It is necessary to remove the gap that exists between rights to economic, social protection and protection of civil rights provided for by the legislation and the way these rights are *de facto* realized, and the way conditions for maintenance of dignified life for an individual are ensured.

One of the primary problems in this task consists in poor domestic implementation. Some researchers have underlined that states should be required

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framework of the project ILO "Overcoming of poverty, promotion of employment and local economic development in the North-Western Federal Region"], Moscow, 2004, p. 10.

6 Statement adopted by the Committee on Economic, Social and Cultural Rights: «Poverty and the International Covenant on Economic, Social and Cultural Rights», [10/05/2001. E/C.12/2001/10], 25th session, Geneva, 23 April-11 May 2001 (available online at: *http://www.acpp.org/RBAVer1_0/archives/CESCR%20Statement%20on%20 Poverty.htm*, last visited: 12 September 2010).

7 It is impossible to guarantee the realization of rights to people at the same level in all the states. This is objectively caused by the different countries' development levels, economic system, and political regime of the states, their different historical conditions, and other characteristics. The state may provide rights to their citizens only at the level which corresponds to the means and possibilities it possesses. This situation is referred to economic and social rights. Unlike the second generation of rights, it is much easier to provide political and civil rights, because it does not require as many efforts and material resources.

to undertake measures providing specific possibilities to people in order not to let those ideas remain as purely theoretical declarations.

In this regard it is interesting to consider the concept of «positive measures» developed by the European Court of Human Rights (hereinafter, «the ECHR» or «the Court»). Except for provisions of some Protocols to the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter, «the European Convention» or «the Convention»), the rights provided for by the Convention have *a negative nature*, obliging states to abstain from certain actions. Therefore, imposing *positive obligations* on states will cause more effective results. Prof. Vera Lúcia Raposo gives a few examples of possible measures that can be undertaken by states for realization the right to life: adequate provision for medical care, or of food and shelter or a healthy working or living environment. As a consequence –she points out– «Governments are not only prohibited of killing, but are simultaneously compelled to take actions in order to protect life». [8] In a similar sense, Prof. Antonio-Luis Martínez-Pujalte also states that the countries must

> «carry out active policies centered on promoting the hiring of persons with disabilities, including affirmative action measures (as the reservation to persons with disabilities of a certain rate of jobs, in both the private and the public sector; or the establishment of tax incentives and other kinds of benefits for the companies that provide them employment)». [9]

In this regard it is difficult to overestimate the role of international courts dealing with complaints of individuals on human rights violations by states, i.e. when the states fail to implement international law norms on human rights into their national legal system effectively and maintain the realization of human rights. Effective functioning of international law as a regulator of international public relations, including international law of human rights, largely depends on the work of international courts. However, some have strong doubts on effectiveness of these bodies, especially on the actual execution of their judgments. Frequently it is assumed that their judgments have a purely moral authority. Indeed, the right of an individual to complaint to the ECHR would be merely declaratory if its judgments were not executed. In the words of Prof. Neshataeva,

> «International law really becomes practicable through court practice […] As long as it is written on a paper and in a treaty, it is a dream that can turn into a smoke at any time.

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8 See Vera Lúcia Raposo: «The Eradication of Poverty in the European Court of Human Rights», paper presented at the International University Sessions on Poverty Eradication: a Challenge for Universities Worldwide, New York, NY, 23-24 November 2009, pp. 8-9 (available online at *www.humandimension.net/forum/euroamerican/index.php?topic=89.0,* last visited 5 September 2010).

9 See, in this same volume, Antonio-Luis Martínez-Pujalte: «Public Disability Policies as Policies Against Poverty», *Cuadernos Constitucionales de la Cátedra Fadrique Furió Ceriol* No. 64/64, pp. 155-170.

> And only if it is mediated through many court judgments, this dream becomes the reality». [10]

Therefore, the following components have to show up in order to guarantee the maintenance of the rights of poor individuals and decrease the level of poverty: implementation of norms of the international law of human rights into national legal systems, work of judicial bodies specialized in consideration of complaints of individuals on violation of human rights by states, and execution of these judgments by the corresponding states-respondents.

In the present paper we will concentrate in the discussion of just one of these issues: the role of the ECHR in the process of the poverty reduction, and more specifically, the effectiveness of the right of individual to apply to the ECHR, that depends on a successful solution of the question of execution of the ECHR judgments, and also the problem of execution and application of the ECHR judgments as exemplified by the situation in the Russian Federation.

2. THE ECHR JUDGMENTS AND POVERTY REDUCTION

Quite possibly, nobody will find any judgments of the ECHR that directly relate to the issue of poverty reduction. This is due to the absence of articles in either the European Convention or Protocols to it regulating, for example, minimum subsistence levels or levels of life that should be ensured by the Contracting States or establishing the obligation of the States to eradicate poverty, or any other related provisions. However, as it was mentioned above, ensuring various human rights is a requirement for advancing in the decrease of poverty levels. Therefore, a violation of the rights provided for by the Convention and Protocols to it may have a negative impact on the material situation and the living conditions of individuals that may even lead to a worsening of their health state or even to death.

In this regard it can be concluded that the ECHR work is somehow related to the goal of the reduction of poverty when it deals with cases resulting in the restoration or improvement of the material situation of an individual or a group of individuals, if the worsening or non-improvement of this situation has become a consequence of the violation of their rights under the Convention or the Protocols signed and ratified by the Contracting States.

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[10] T. N. Neshataeva: «Mezhdunarodnoe pravo v sudebnoi sisteme: problemy pravoprimenitel'noi praktiki arbitrazhnykh sudov Rossiyskoi Federatsii [International law in a judicial system: problems of law enforcement practice of Arbitral Courts of the Russian Federation]», in M. A. Mityukov, S. V. Kabyshev, V. K. Bobrova, A. V. Sychyova (eds.): *Obshchepriznannye printsipy i normy mezhdunarodnogo prava, mezhdunarodnye dogovory v praktike kostitutsionnogo pravosudiya: materialy Vserossiyskogo soveshchaniya (Moskva. 24 dekabrya 2002 goda) [Generally recognized principles and norms of international law, international treaties in practice of constitutional justice: materials of the All-Russian conference (Moscow, 24 December 2002)]*, Moscow, 2004, p. 372.

Only a few rights defined in the Convention and Protocols to it, which, in our opinion, have the most significant meaning for poverty reduction, will be considered within the scope of this paper: the right to the protection of property, the right to a fair trial and to an effective remedy, and also the right to non-discrimination.

However, before analysis of the above referred rights and respective judgments of the ECHR in cases on their violation, the significance of the ECHR «pilot-judgment procedure» for poverty reduction deserves to a brief consideration.

Realizing the necessity to increase the effectiveness of the mechanisms established by the Convention, the Committee of Ministers adopted in 2004 a Resolution –Res (2004) 3– on judgments revealing an underlying systemic problem. In this Resolution the Committee of Ministers invited the ECHR

> «[…] to identify, in its judgments finding a violation of the Convention, what it considers to be an underlying systemic problem and the source of this problem, in particular when it is likely to give rise to numerous applications, so as to assist States in finding the appropriate solution and the Committee of Ministers in supervising the execution of judgments». [11]

In connection with such new *competence* of the ECHR the concept of «pilot-judgment procedure» was developed, according to which the ECHR can strike out one of the repetitive cases to clearly identify in a judgment in this case the existence of systemic problems and to indicate specific measures to be taken by the respondent State; and the State, while executing the pilot judgment, is to address the specific situation of applicants who have already applied to the ECHR. [12]

Therefore, the institute of «pilot-judgment procedure» plays a special role in relation to cases involving poverty reduction: the ECHR judgment will have an impact on not only on a certain individual –the person presenting the case, under whose application the ECHR has acted, and whose rights will be restored–, but also on a large group of individuals whose rights have been actually violated, or could be violated on the same basis by the State, so that specific systemic problems that caused violation of rights and influenced negatively on the position of poor people, are solved. In order to illustrate ths mechanism, a few significant «pilot» judgments in cases on violation of specific rights will be considered further on in this paper.

Now the application by the ECHR of Article 1 of Protocol No. 1 on the «Protection of property» will be considered. It is the only article contained in the

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[11] Para. 1 of the Resolution Res. (2004) 3 of the Committee of Ministers on judgments revealing an underlying systemic problem dated 12 May 2004. Available online at: *https://wcd.coe.int/ViewDoc.jsp?id=743257&lang=fr* (last visited: 12 September 2010)

[12] Thus, the ECHR initiated pilot-judgment procedure, adopting pilot-judgments, starting with *Broniowski v. Poland* case (see: *Broniowski v. Poland* [GC], No. 31443/96, ECHR 2004-V).

Convention and Protocols to it that directly relates to property rights and therefore to the material situation of individuals. [13]

The essential object of this Article is to protect a person against unjustified interference by the State with the peaceful enjoyment of his or her possessions. In the *Marckx* case, the ECHR indicated that in substance Article 1 guarantees the right of property. As to the term «possessions», it is not limited to the ownership of physical goods, since other rights and interests constituting assets should also be regarded as property rights and therefore as «possessions». The main point is the economic value of this right. [14]

Article 1 of Protocol No. 1 contains three rules. The first rule establishes the general principle of the peaceful enjoyment of property, consisting in the right of individuals to use their property without any disturb, and at their own discretion. The second rule covers deprivation of possessions and subjects it to conditions provided for by the law and the general principles of international law. The third rule recognizes the right of the Contracting States «to control the use of property in accordance with the general interest or to secure the payment of […] contributions or penalties». All these rules are interrelated. The main reason of complaints addressed to the ECHR in connection with violation of this Article arises from the absence of an exact definition of the boundaries between positive and negative obligations of the States. There are cases concerning an excessive use of rights of control by the States under this Article, which leads to backset of the material situation of individuals.

The ECHR judgment in the *Hutten-Czapska v. Poland* case could be a good example of violation of the specified right. In this case the ECHR found a violation of the applicant's right to the peaceful enjoyment of her possessions, which consisted in the impossibility to secure the re-housing of the tenants who had been assigned apartments in her house and to fix the amount of their rent freely due to the rent-control scheme existing in Poland. The ECHR applied Article 1 of Protocol No. 1, making this a «pilot judgment», because it noted that the violation had originated in a systemic problem related to the malfunctioning of domestic legislation, since it imposed restrictions on landlords regarding the termination of leases and the establishment of reasonable rent fee, as well as to the absence of a legal mechanism allowing to mitigate negative consequences of the state scheme. The ECHR concluded that Poland had failed to strike the necessary fair balance

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13 Pursuant to Article 1 of Protocol No. 1

> «Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties».

14 See: Pieter van Dijk, Fried van Hoof, Arjen van Rijn and Leo Zwaak (ed.): *Theory and Practice of the European Convention on Human Rights* (4th ed.), Oxford, Antwerp, 2006, p. 866.

between the general interests of the community and the protection of the right of property. [15]

Another example of the ECHR judgments in cases of a violation of Article 1 of Protocol No. 1 is its judgment in the *Joubert v. France* case. [16] The ECHR established the interference with the applicant's possession caused by a retroactive legislative provision introduced during the course of the proceedings challenging a supplementary tax assessment (that caused violation of Article 1 of Protocol No. 1). The ECHR found that the adoption of the Budget Act provision that regulated retroactively and definitively the dispute opposing the applicants to the fiscal administration, was not justified on public-interest grounds and was upsetting the balance between the protection of rights of individuals and the general interest.

Apart from cases purely related to a violation of Article 1 of Protocol No. 1, it is necessary to analyze other categories of cases in the ECHR practice, which have a significant meaning in the context of poverty reduction. Namely, cases concerning a violation of the right to a fair trial (Article 6 of the Convention). [17]

The right to a fair trial is one of the most important procedural guarantees for an individual both in criminal and civil procedures. This right is connected with the right to the restoration of violated rights and the acknowledgement of a court to be a body that is capable to maintain such restoration fairly.

The important issue to discuss is the actual access of the poor to the protection of their rights. As Prof. Isabel Fanlo Cortés notes, [18]

> «the feasibility of jurisdictional remedy (as an instrument typical of, but not exclusive to, the protection of rights) is often viewed not only as a condition for the effectiveness of rights but also as the premise for their legal (not merely moral) existence (*ubi remedium, ibi ius*)».

Access to protection is a first door a poor person needs to pass through in search of justice. Dr. Edgardo Buscaglia has underlined the necessity of a «provision of formal and informal conflict resolution mechanisms in order for individuals to be able to exercise their basic political, civil, and economic rights». He holds the opinion that only the predictable, consistent, and coherent exercise of basic political, civil, and economic rights via access to protection mechanisms is the source of economic development and growth. [19]

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15 *Hutten-Czapska v. Poland* [GC] No. 35014/97, ECHR 2006-... The operative part.

16 *Joubert v. France,* No. 30345/05, 23 July 2009.

17 Article 6 of the Convention establishes, in particular, that in the «determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law».

18 See, in this same volume, Isabel Fanlo Cortés: «Justice for the Poor in the Hands of the Lawyers? Some Remarks on Access to Courts and Legal Aid Models», *Cuadernos Constitucionales de la Cátedra Fadrique Furió Ceriol* No. 64/64, pp. 77-96, in pp. 78-79.

19 Edgardo Buscaglia: «Poverty, Efficiency of Dispute Resolution System, and Access to Justice in Developing Countries», *Cuadernos Constitucionales de la Cátedra Fadrique Furió Ceriol* No. 64/64, pp. 19-46, in p. 19.

The administration of justice is possible only when an individual is guaranteed with access to a court instance and this access is real, and not simply formal. It means that an interested person should have a possibility to secure consideration of his case. Thereby, as the ECHR notes in its judgments, no excessive legal and practical obstacles should hinder the dispute consideration. Obstacles to be eliminated would be, for example, complex and formalized procedures of receipt and consideration of petitions, high rates of court fees; inaccessibility of attorney's assistance; the absence of simplified procedures for the consideration of uncomplicated cases and cases on rights that require immediate protection, etc. [20]

Analyzing the practice of the ECHR, it is necessary to note several situations related to the right to access to a court when, for example, the removal of financial obstacles for taking a legal action is considered to be justified. The cost of judicial proceedings or the obligation to deposit a pledge can become such obstacles. [21] For example, in the *Airey vs. Ireland* case the ECHR concluded that rejection of judicial authorities to provide legal aid to a woman having no financial means who was seeking for recognition in law of her *de facto* separation from her husband who was violently-inclined, was a violation of her right to a fair trial stipulated by Item 1 of Article 6 of the Convention. [22]

Right to a fair trial is a guarantee for all the other rights and freedoms. As the Russian Federation Constitutional Court fairly notes, this right serves as an

> «essential guarantee for realization of all rights and freedoms which, being direct-acting, determine the meaning, content and application of laws, activity of legislative and executive, self-regulation authorities and ensured by justice (Article 18 of Constitution of the Russian Federation), and recognition, observance and protection of which is a duty of the state, according to Article 2 of Constitution of the Russian Federation». [23]

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20 See: *Informatsionnoe pismo VAS RF ot 20.12.1999 N S1-7/SMP-1341 «Ob osnovnykh polozheniyakh, primenyaemykh Evropeiskim sudom po pravam cheloveka pri zashchite imushchestvennykh prav i prava na pravosudie [Information Letter of the Supreme Arbitral Court of the Russian Federation dated 20 December 1999 No. S1-7/SMP-1341 «On Main Provisions on Human Rights Applied by the European Court of Human Rights in the Course of Protection of Property Rights and the Right to a Fair Trial»],* (available online at: *www.consultant.ru*, last visited: 6 September 2010).

21 See: Yu. V. Samovich: «K voprosu o prave individa na spravedlivoe sudebnoe razbiratelstvo (v kontekste deyatelnosti Kostitutsionnogo Suda Rossiykoi Federatsii i Evropeiskogo suda po pravam cheloveka) [On the right of an individual to a fair trial (in the context of activity of the Constitutional Court of the Russian Federation and European Court on Human Rights]», in M. A. Mityukov, S. V. Kabyshev, V. K. Bobrova and A. V. Sychyova (eds.): *Obshchepriznannye printsipy i normy mezhdunarodnogo prava*…, cit. p. 251.

22 *Airey vs. Ireland*, No. 6289/73, 9 October 1979. Paras. 32-33.

23 Postanovlenie Konstitutsionnogo Suda RF po delu o proverke konstitutsionnosti st. 140 GPK RSFSR ot 14 fevralya 2002 g. [Decree of the Constitutional Court of the Russian Federation in case on constitutionality test of Article 140 of the Civil Procedural Code of the Russian Soviet Federative Socialistic Republic dated 14 February 2002], (available online at: *www.consultant.ru*, last visited: 6 September 2010).

In the context of poverty reduction issue it is necessary to analyze the ECHR judgments in cases of violation of Article 1 of Protocol No. 1 with close reference to the violations of Article 6 or/and Article 13 of the Convention (the right to an effective remedy), [24] when the violation of Article 6 consists in non-execution or delayed execution of domestic court decisions ordering compulsory payments to individuals who filed a complaint against the state, and when the violation of Article 13 consists in the absence of an effective domestic remedy on compensation to individuals due to non-execution/delayed execution of domestic court decisions.

On 15 January 2009 a remarkable «pilot judgment» was passed in the *Burdov v. Russia (No. 2)* case concerning a non-execution/delayed execution of domestic court decisions. The applicant complained that the authorities' prolonged failure to comply with the binding and enforceable court decisions ordering payment of allowances in his favor, in particular payments for damage health and food allowance, violated his rights under Article 1 of Protocol No. 1 and Article 6 of the Convention. In the course of the case consideration the ECHR established the existence of a general problem affecting large groups of population. The ECHR concluded that besides the breach of Article 1 of Protocol No. 1 and Article 6 of the Convention there had been a violation of Article 13 of the Convention, «on account of the lack of effective domestic remedies in respect of non-enforcement or delayed enforcement of judgments in the applicant's favor». [25]

The Court practice of adopting «pilot judgments» regarding non-execution or delayed execution of domestic court decisions has been developed in *Olaru and others v. Moldova* case. [26] The case was originated by four applications against the Republic of Moldova lodged with the ECHR by six Moldovan nationals. The ECHR found a breach of individuals' rights guaranteed by Item 1 of Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention as a result of the authorities' failure to comply with final judicial decisions delivered by domestic courts in favor of individuals to whom social housing had been offered.

Besides the several cases mentioned above, it is also necessary to analyze another group of cases on violations of Article 14 of the Convention (prohibition of discrimination). [27]

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24 Pursuant to Article 13 of the Convention «Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity».

25 *Burdov v. Russia (No. 2)*, No. 33509/04, 15 January 2009. Para. 4 of the judgment operative part.

26 *Olaru and others v. Moldova,* Nos. 476/07, 22539/05, 17911/08 and 13136/07, 28 July 2009.

27 Pursuant to Article 14 of the Convention «The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status».

The principle of non-discrimination is one of the main principles of the international law of human rights. As the Office of the High Commissioner for Human Rights emphasizes,

> «As discrimination causes poverty, poverty also causes discrimination. The poor are usually victims of discrimination based on various and often multiple grounds, such as birth, property, national and social origin, ethnic origin, religion, ethnic origin, color or gender». [28]

Many authors agree with such point, [29] and as Prof. Gabor Kardos notes, poor people are

> «those who belong to the weaker side of the society, especially those who do nor have real conflict capabilities –those not having a voice in social debate, those who cannot choose–, like handicapped people or the inhabitants of slums and the homeless people».[30]

Therefore, judgments of the ECHR, in which it establishes the existence of a discrimination, especially related to the violation of property rights, make a great contribution to improvement of the position of poor people.

As the ECHR states –particularly in the *Rasmussen v. Denmark* case–, for the purposes of Article 14 of the Convention, a difference of treatment is discriminatory if it «has no objective and reasonable justification», that is, if it does not pursue a «legitimate aim» or if there is not a «reasonable relationship of proportionality between the means employed and the aim sought to be realized».[31]

For example, Prof. Luis Martínez-Pujalte notes that disabled people face discrimination much more often than others:

> «disabled persons suffer, in fact, discrimination, not mainly because of their handicap, but because of the obstacles of a social environment where they don't fit in».

Such obstacles prevent them from accessing to work and education, they cannot get out of social isolation and reach a worthy standard of living. In this

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28 The Office of the High Commissioner for Human Rights: «Human Rights, Poverty Reduction and Sustainable Development: Health, Food and Water, A Background Paper for the World Summit on Sustainable Development (Johannesburg, 26 August-4 September, 2002)», *Health and Human Rights Publications Series*, No. 5 (2005), p. 5 (available online at: *http://www.un.org.kg/ru/publications/–/article/document-database/un-system-in-kyrgyzstan/human-rights-and-human-rights-based-approach/118-food/2056-human-rights-poverty-reduction-and-sustainable-development-health-food-and-water-eng-,* last visited: 11 September 2010).

29 See, for example: Vera Lúcia Raposo: «The Eradication of Poverty in the European Court of Human Rights», cit., p. 1; and Antonio-Luis Martínez-Pujalte: «Public Disability Policies as Policies Against Poverty», cit.

30 Gábor Kardos: «The Internationally Recognized Right to Housing: Implications and (Some) Applications», *Cuadernos Constitucionales de la Cátedra Fadrique Furió Ceriol* No. 64/65, pp. 121-131, at pp. 121-122.

31 *Rasmussen v. Denmark,* 28 November 1984, Series A No. 87. Para. 38.

regard Prof. Luis Martínez-Pujalte makes an interesting proposal: to implement the so-called «social model» that is not aimed at the correction of the disabled person, but at the correction of society, at «the removal of the social obstacles that hinder the opportunities of persons with disabilities». [32] Protection of disabled people from discrimination and ensuring them an honorable future is one of the ways of prevention of the poverty level increase.

The principle of prohibition of discrimination is provided for by Article 14 of the Convention, and under general rule [33] it is applied additionally to other Articles of the Convention. Thus, a group of judgments of the ECHR in cases concerning a violation of Article 14 with close reference to Article 1 of Protocol No. 1 is worth considering in the context of poverty reduction.

The *Mazurek v. France* case can serve as an example in which articles mentioned above were violated. In this case the applicant became a victim of the State's negative attitude to equality between children born in and out of the wedlock as regards their civil rights. [34] The ECHR did not establish any ground in the case on which to justify discrimination based on birth out of wedlock. According to the Court, in any event, «an adulterine child cannot be blamed for circumstances for which he or she is not responsible». [35]

As demonstrated above, the ECHR has played a significant role in poverty reduction by adopting its judgments in cases of violation of specific human rights that leads to a restoration or improvement of poor people rights, and consequently of their material situation (the measures that respondent states undertake in the course of execution of the ECHR judgments will be considered in Section 3.1 of the present paper). In this regard «pilot judgments» of the ECHR have a special impact when the ECHR underlines a systemic problem and obliges the respondent states to undertake corresponding measures in order to prevent similar human rights violations in the future.

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32 Antonio-Luis Martínez-Pujalte: «Public Disability Policies as Policies Against Poverty», cit., pp. 2, 5-6.

33 However, in the decision in *Glor v. Switzerland* (No. 13444/04, 12 May 2009) the ECHR stressed the autonomy of Article 14 so that it may be violated even when the other Articles are not. Therefore, Article 14 may be violated in situations which go beyond the limited number of rights contained in the Convention. This has included situations where socio-economic rights are more applicable and where discrimination is often experienced, e.g., social security matters, the right to work, etc. (See the detailed analysis of the ECHR decision in *Glor v. Switzerland* in Jill Stavert: «Case Comment: Glor v. Switzerland: article 14 ECHR, disability and non-discrimination», *Edinburgh Law Review*, No. 14/1 (2010), pp. 141-146).

34 Namely, due to the French Civil legislation the applicant's inheritance rights over his mother's estate were limited as compared to those of his half-brother, which would not have been limited if he had been a child born in wedlock or one born out of wedlock but not of an adulterous relationship.

35 *Mazurek v. France*, No. 34406/97, 1 February 2000, para. 54.

3. THE EXECUTION OF ECHR JUDGEMENTS

The feasibility of impact the ECHR has on the level of poverty in the Contracting States obviously depends on execution of its judgments by States related to restoration or improvement of the individuals' material position. The right of individuals to apply for protection of their violated rights would be declaratory if judgments of these bodies were not executed.

3.1 The legal force of the ECHR judgments

It is necessary to make an analysis of the content of the obligation of the Contracting States to execute the ECHR judgments. In accordance with Article 1 of the Convention the Contracting States undertake the obligation to secure to everyone within its jurisdiction the rights and freedoms defined in the Convention. [36] The obligation to execute the ECHR judgments derives from the responsibility assumed by the Contracting States which have not succeeded in fulfillment of the obligation under Article 1. Thus, pursuant to Item 1 of Article 46 of the Convention the «High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties».

The ECHR clarified its position saying that a judgment finding a breach imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or –if appropriate– individual measures to be adopted in their domestic legal order to put an end to the violation found by the Court and to redress so far as possible the effects. [37]

Generally, the obligation to execute the ECHR judgment adopted against a certain state includes three undertakings for this state, besides the payment of a just satisfaction awarded to the applicant: to put an end to the violation, to make reparation, and to avoid similar violations. There are particular types of measures the respondent state is likely to undertake in the course of fulfillment of these obligations.

The obligation to make reparation entails the adoption of individual measures. According to the general rule, reparation should take, whereas possible, the form of *restitutio in integrum*, i.e. the respondent state is to ensure restoration of the same situation for an applicant as he or she enjoyed before the violation of the Convention occurred to as greater extent as possible. These measures may

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36 Article 1 of the European Convention: «The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section 1 of this Convention».

37 See, for example: *Scozzari and Giunta v. Italy*, Nos. 39221/98 and 41963/98, 13 July 2000, para. 249.

consist in the re-opening of proceedings at the national level, striking-out of criminal records, return of property and others.

For example, Russian legislation stipulates that ECHR judgments are a ground for the reconsideration of a national court decision (in criminal and arbitral [38] proceedings). [39] Thus, such individual measure as the re-opening of criminal proceedings was undertaken, for example, in response to the ECHR judgment in *Baklanov v. Russia* case in which the ECHR established violation of the applicant's rights to possessions provided for by Article 1 of Protocol No. 1 in the course of criminal proceedings against the applicant. [40] The Presidium of the Russian Federation Supreme Court in its Decree dated 10 May 2006 canceled the national court decision in part of forfeiture of the applicant's monetary funds to the State and decreed a re-opening of criminal proceedings.[41]

In the *Puig Panella v. Spain* case, [42] concerning the violation of the presumption of the applicant's innocence which had lead to the applicant's imprisonment, among the individual measures undertaken for the execution of the judgment was the elimination of the applicant's criminal record. As a result of the execution of the judgment in the *Brudnicka and others v. Poland* case, [43] applicants

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38 The Arbitral Court system in Russia should not be confused with private arbitration. These state courts have jurisdiction over economical disputes and other cases concerning conducting entrepreneur or other economical activity.

39 In accordance with Item 7 of Article 311 of the RF Arbitral Procedural Code, the ground for reconsideration of a court decision upon discovery of new facts is «determination by the ECHR of a violation of the European Convention provisions occurred in the course of consideration of the particular case by the Arbitral Court, with regard to adoption of the decision in which the applicant applied to ECHR». Item 4 of Article 413 of the RF Criminal Procedural Code stipulates that the determination by the ECHR of a «violation of the European Convention provisions occurred in the course of consideration of a criminal case by a court of the Russian Federation, that is related to a) application of a federal law that is not in compliance with the European Convention; b) other violations of the European Convention provisions» is a ground for re-opening of criminal proceedings. Though as of today the Russian Civil Procedural Code does not contain such ground, still reconsideration of national court decisions in civil cases is justifiable on the ground of the ECHR judgments, as established by the Russian Federation Constitutional Court in its recently adopted Decree dated 26 February 2010 No. 4-P.

40 *Baklanov v. Russia,* No. 68443/01, 9 June 2005 (the applicant was charged with smuggling for not declaring the amount of USD 250,000 he was carrying with him when crossing the State border; the money was confiscated and the applicant was convicted to 2 years of conditional imprisonment).

41 *Postanovlenie Prezidiuma Verkhovnogo Suda RF ot 10.05.2006 N 203P06PRK [Decree of the Presidium of the RF Supreme Court of the Russian Federation dated 10 May 2006 No. 203P06PR]),* (available online at: *www.consultant.ru*, last visited: 6 September 2010).

42 *Puig Panella v. Spain*, No. 1483/02, 25 April 2006.

43 The case concerns the lack of independence and impartiality of the Maritime Disputes Appeals Chamber in proceedings to determine the reason of a shipwreck in which relatives of the applicants had died (violation of Item 1 of Article 6 of the Convention). See *Brudnicka and others v. Poland,* No. 54723/00, 3 March 2005.

were granted a right to bring actions in compensation for pecuniary and non-pecuniary damages before the ordinary courts.

In some cases, besides the adoption of individual measures, the respondent State has been prescribed to adopt measures of a general nature fulfilling the obligation to avoid similar violations. As Elisabeth Lambert-Abdelgawad notes,

> «This will be the case where the Court has expressly or impliedly called a general legislative provision into question, or when violations of a similar kind cannot be avoided in the future without such legislative amendment [or when] general legislation by its very existence violates the rights of the individual applicant». [44]

As mentioned above, the ECHR when establishing systemic violations of human rights caused by a certain general problem, adopts «pilot judgments», and the respondent state is required to undertake general measures in order to solve such problem and prevent the occurrence of similar violations in the future. Therefore, undertaking general measures in the course of execution of such «pilot judgments» plays a special role.

In order to increase the effectiveness of the Convention mechanism, and besides the Resolution (2004) 3, the Committee of Ministers adopted in 2004 Recommendations on the improvement of domestic remedies. In these Recommendations it emphasized that, in addition to the obligation under Article 13 of the Convention to ensure that everyone whose rights and freedoms are violated has an effective remedy before a national authority, the States have the general obligation to solve the problems which caused the violations found. The Committee of Ministers recommended that Member States

> «review, following Court judgments which point to structural or general deficiencies in national law or practice, the effectiveness of the existing domestic remedies and, where necessary, set up effective remedies, in order to avoid repetitive cases being brought before the Court». [45]

Therefore, the most common measures of a general nature undertaken by respondent states are legislative or regulatory amendments, a change in administrative practice or in case law, or the translation and publication of the ECHR judgments.

For example, in *Burdov v. Russia (No.2)* case, mentioned above, the ECHR decided that an appropriate measure to put an end to the violation found would be setting up

> «within six months from the date on which the judgment becomes final […] an effective domestic remedy or combination of such remedies which secures adequate and

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44 Elisabeth Lambert-Abdelgawad: *The Execution of Judgments of the European Court of Human Rights* (2nd. Ed.), Council of Europe, Strasbourg, 2008, p. 11.

45 Recommendations (Rec(2004)6) of the Committee of Ministers on the improvement of domestic remedies dated 12 May 2004 (available online at: http://www.justice.gov.sk/a/dwn/l8/VMCS_odp_2004_06.pdf, last visited: 12 September 2010).

> sufficient redress for non-enforcement or delayed enforcement of domestic judgments».[46]

The Russian Government has undertaken the required measures. In execution of the ECHR judgment the State *Duma* of the Russian Federation recently adopted the Federal Law «On Compensation for Violation of Rights to Trial in Reasonable Terms» (dated 30 April 2010 No 68-FZ). This Law provides for the guarantees to ensure that individuals (citizens of the Russian Federation, foreign citizens, as well as persons without citizenship) and organizations (Russian, foreign and international ones) have the right to trial in a reasonable term and the right to execution of a judicial act in a reasonable term too, considering its violation to be a ground for awarding a fair compensation. In accordance with this Law the right to apply for awarding of a compensation for violation of the rights indicated above is granted to any interested person who suffered consequences in regard to violations of reasonable term of a trial and execution of a judicial act. It should be noted that not only the duration of the case consideration by a court, but also the duration of pre-trial procedure in criminal case is considered.

Following the ECHR judgment in *Hutten-Czapska v. Poland* case the Polish Government also introduced some amendments to the Act of 21 June 2001 on the Protection of the Rights of Tenants and the Housing Resources of Municipalities; also the Constitutional Court found that provisions limiting municipalities' civil liability for damage resulting from failure to provide welfare accommodation to tenants entitled to it, were contrary to the Constitution, so they were repealed.

Following the ECHR judgment in the *Segerstedt-Wiberg and others v. Sweden* case [47] the Swedish Government undertook general measures establishing a new agency, the Swedish Commission on Security and Integrity Protection, in order to supervise the use of secret surveillance by crime-fighting agencies and the processing of personal data by the Swedish Security Service.

As it follows from the referred examples, the execution of the ECHR judgments has a great impact on domestic legislation and practice of the respondent states. However, it should be noted that the ECHR judgments influence not only on the respondent states, but also on the states which are not parties to specific cases.

According to the general principle, an ECHR judgment is binding for a party to the case but not third persons. [48] Therefore, it may seem that only that part of the ECHR judgments which is adopted in the course of the consideration of cases relating violations of the conventional obligations by specific Contracting State (when this violation took place after the State ratified the Convention) is

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46 *Burdov v. Russia (No. 2)*, No. 33509/04, 15 January 2009. Para. 6 of the judgment operative part.

47 *Segerstedt-Wiberg and others v. Sweden*, No. 62332/00, 06 June 2006.

48 The obligation to execute a judgment of the ECHR in a particular case under Item 1 of Article 46 of the European Convention is not *erga omnes*, i.e. only states which are parties to that case are obliged to abide by the decision and to execute it.

obligatory for this specific Contracting State. However, the majority of researchers hold the opinion that judgments of the ECHR have the effect also on other states even if they are not parties to the particular case.

Thus, the Russian Federation Federal Law «On the Ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols to it» [49] defined specific frames for the recognized jurisdiction of the Court: it is obligatory for the Russian Federation in interpretation and application of the Convention and Protocols to it in cases of supposed violation by Russia of the provisions of the specified treaties, when supposed violation took place after they entered in force for Russia. Nevertheless, as Prof. S. Yu. Marochkin notes, the Russian Federation Constitutional Court in the course of the interpretation of the indicated provision of the Federal Law provided later on a significant estimate to the role of the ECHR judgments in the national legal system of Russia:

> «[…] along with the Convention for the Protection of Human Rights and Fundamental Freedoms, judgments of the European Court of Human Rights –in part where they give interpretation of the content of rights and freedoms provided for by the Convention, relying on the generally recognized principles and norms of the International law […]– are a component part of Russian legal system». [50]

In fact the scope of the ECHR judgments used by Russian courts turns out to be wider in both time and subjective aspects than it is specified by the named Federal Law. In practice, in the course of consideration of the ECHR cases Russian courts apply judgments adopted in relation to third states, and not only judgments adopted in relation to Russia itself. In fact, the majority of judgments quoted by Russian courts are those related to third states, and not to Russia.

Judgments have a wider significance since during the formulation of the judgment against one state the ECHR refers to the existing case law, including those cases brought against other states. Therefore, in each judgment the ECHR, besides establishing a violation by a certain state and imposing legal obligations on it as described above, also provides interpretation of provisions of the Convention (and Protocols to it).

As Judge of the Russian Constitutional Court N. S. Bondar concludes, judgments of the ECHR adopted against one state are obligatory for the third states on the assumption of a special status of the ECHR. Thus, Judge Bondar determines a dual function of the ECHR in regard to control on observance of the

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49 *Federalniy zakon RF «O ratifikatsii Konventsii o zashchite prav cheloveka i osnovnykh svobod i Protokolov k nei ot 30 marta 1998 g. N 54-FZ [Federal Law of the Russian Federation «On Ratification of the Convention on Protection of Human Rights and Fundamental Freedoms and Protocols to It» dated 30 March 1998 No. 54-FZ],* (available online at: *www.consultant.ru*, last visited: 6 September 2010).

50 See: S. Yu. Marochkin: «O mezhdunarodnoi sostavlyayushchei pravovoi sistemy Rossii: osvoenie i razvitie praktikoi konstitutsionnogo printsipa [On International Component of the Legal System of Russia: Application and Development by Practice of the Constitutional Principle]», *Pravovedenie,* No 1 (2010), p. 182.

European Convention provisions via determination of occurrence or absence of their violation by the Contracting States (law-enforcement function), on one hand, and on interpretation of the European Convention provisions (interpretation function), on the other hand. [51] Therefore, it is necessary to take into account a dual legal nature of the judgments of the ECHR: firstly, as casual judgments in specific cases which are in jurisdiction of the ECHR; secondly, as sources of official interpretation of the Convention provisions, which is of importance not only to a specific case, but also is of precedent importance for consideration of following analogous cases. Each judgment in a case is not just an independent act, but a contribution to the development of the European Convention jurisprudence.

In this regard we may conclude that the binding significance of the ECHR judgments has two sides: judgments adopted in specific cases are obligatory, under general rule, for those Contracting States which are parties to these cases; while for other Contracting States, which do not participate in the cases, the ECHR judgments are obligatory only as far as they provide an official interpretation of the Convention provisions in their judgments, assuming the meaning of legal propositions of the ECHR. Therefore, the Contracting States in the course of fulfilling their obligations under Article 1 of the Convention, i.e. the obligation to bring their law and practice in compliance with the provisions of the Convention, should base their acts on the interpretation of its provisions by a body jurisdiction of which is recognized by the Contracting States. Only in case a Contracting State takes into account all existing practice of the ECHR it will be able to avoid new complaints to the ECHR and the recognition of new violations of the Convention.

Such conclusion on the role of the ECHR judgments finds its justification in judicial practice at the national level. To provide an example, the Plenary of the Supreme Court of the Russian Federation stated in the Decree dated 10 October 2003 No. 5 «On Application of Generally Recognized Principles and Norms of the International Law and International Treaties of the Russian Federation by Courts of General Jurisdiction» referred to the Vienna Convention on International Treaties dated 23 May 1961 in part of interpretation of international treaties which should be conducted subject to not only context of the treaty, but also further practice of the treaty application. [52]

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51 See: S. N. Bondar: «Konvencionnaya yurisdiktsiya Evropeiskogo suda po pravam cheloveka v sootnoshenii s kompetentsiei Konstitutsionnogo Suda RF [Conventional Jurisdiction of the European Court on Human Rights in the Ratio with the Competence of the RF Constitutional Court]», *Zhurnal rossiyskogo prava,* No. 6 (2006), p. 113-127.

52 Subpara. 3) para. 3 art. 31 of the Vienna Convention on International Treaties dated 23 May 1961. (Some authors note that provisions of the 1961 Vienna Convention cannot be applied to the European Convention of 1950 since treaties do not have retrospective force, however we should note that there is a strong presumption that nowadays rules on interpretation of international treaties established by art. 31 and 33 of the Vienna Convention may be considered as a general principle of the international law. See: R. St. J. Macdonald, F. Matscher, H. Petzold (eds.): *The European System for the Protection of Human Rights*, M. Nijhoff Publishers, Dorchester, 1993).

In connection to this, the Plenary of the Russian Federation Supreme Court prescribed that Russian national courts should apply the European Convention as well as Protocols to it taking into account the consolidated practice of the ECHR in order to avoid any violation of the Convention and its Protocols. [53] The first time the Constitutional Court of Russia referred to a judgment of the ECHR was on occasion of its Decree dated 23 November 1999, in a case involving the examination of the constitutional provisions of the Federal Law «On Freedom of Conscience and Religious Communities». [54] In that case the Constitutional Court indicated that the ECHR judgments dated 25 May 1993 and 26 September 1996 explained the nature and the scale of the States obligations arising from the Article 9 of the European Convention.

Besides these two situations in which the ECHR judgments have a binding force for the Contracting States, there are other situations in which the ECHR work has an impact on the states as well, in this case through the work of national courts. National courts (in Russia at least) besides referring to the ECHR judgments when interpreting provisions of the Convention and Protocols to it, apply the ECHR judgments in their practice in several other forms. For example, as it follows from practice, Russian courts regularly refer to the ECHR judgments in order to evaluate specific ideas and situations, for taking into account the ECHR legal prepositions and its precedent practice, in order to unify their own legal prepositions (e.g., in relation to certain legal categories, understanding of principles of law, etc.), or as a ground for the reconsideration of their decisions. [55]

To conclude, the ECHR work influences greatly on all the Contracting States, even on those which are not parties to particular cases. Legal prepositions of the ECHR in part of interpretation and application of the Convention provisions formulated in the course of considering of cases against one State are obligatory not only for this State, but for other Contracting States as well. This has a significant meaning for a uniform comprehension and application of the ECHR judgments that are related to poverty reduction among all High Contracting States.

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53 Para. 10 of the Postanovlenie Plenuma Verkhovnogo Suda RF ot 10.10.2005 N 5 «O primenenii sudami obshchei yurisdiktsii obshchepriznannykh printsipov i norm mezhdunarodnogo prava i mezhdunarodnykh dogovorov Rossiyskoi Federatsii» [Decree of the Plenum of the RF Supreme Court dated 10 October 2003 No. 5 «On Application of Generally Recognized Principles and Norms of the International Law and International Treaties of the Russian Federation by Courts of General Jurisdiction»], (available online at: *www.consultant.ru,* last visited: 9 September 2010).

54 Postanovlenie Konstitutsionnogo Suda ot 23 noyabrya 1999 goda N 16-P po delu o proverke kostitutsionnosti abzatsev tretiego i chetvyortogo punkta 3 statii 27 Federalnogo zakona «O svobode sovesti i o religioznykh obiedineniyakh» [Decree of the RF Constitutional Court dated 23 November 1999 No. 16-P in the case on constitutionality test of provisions of the Federal Law «On Freedom of Conscience and Religious Communities»], (available online at: *www.consultant.ru,* last visited: 9 September 2010).

55 See for details: S. Yu. Marochkin: «O mezhdunarodnoi sostavlyayushchei pravovoi sistemy Rossii…», pp. 182-186.

3.2 Problems of technical nature in execution and application of the ECHR judgments: case study of the Russian Federation

It is necessary to note that the execution and application of ECHR judgments is conducted with certain problems, which differ depending on the legal system and the practice of each particular state. Practice of the Russian Federation in the execution and application of the ECHR judgments identified several problems, mostly of technical nature, which require organizational and legislative solutions. We assume that some of the challenges which will be described in the present Section are faced not only by Russia, but also by many other states.

A problem of availability of the ECHR judgments occurs when using the ECHR practice. As Prof. N. V. Vitruk fairly notes, the solution of this problem has several aspects, including information retrieval and legal ones. [56]

One of the problems consists in the absence of an official publication of the translations of the ECHR judgments. A majority of law enforcement officials and representatives of the legal community in Russia –and quite probably other countries– are not able to obtain information from the official ECHR website since the ECHR judgments are published only in the official languages of the Court – English and French.

First of all, and for the purpose of assuring full compliance of law enforcement practice with the ECHR standards, an information system for officials, judges, legal community and civilians on the ECHR judgments should be arranged. In pursuing these aims existing or new systems of keeping and searching officially published ECHR judgments should also be reinforced. At present time the Russian Federation Representative in the Court has to inform the Russian Federation Supreme Court and other authorities on the judgments adopted against Russia. In this regard his Office conducts translations of judgments into the Russian language. However, these translations are not published in official editions (except for several of the Court's first judgments which were published in the *Rossiyskaya Gazeta* the official journal for publication of legal acts). There is a rule that all the legal acts have to be published in official editions, or otherwise they cannot be applied.

According to some Russian researchers, application by courts of the ECHR judgments which have not been published in Russian language can contravene certain provisions of the Constitution of the Russian Federation. The requirement of the Constitution of the Russian Federation on the necessity of the publication of legal acts and the prohibition of the application of non-published acts follows from the right of an individual to know his/her legal status, since only knowing his/her

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56 N. V. Vitruk: «O yuridicheskoi sile resheniy Evropeiskogo Suda po pravam cheloveka», in M. A. Mityukov, S. V. Kabyshev, V. K. Bobrova and A. V. Sychyova (eds.): *Obshchepriznannye printsipy i normy mezhdunarodnogo prava, mezhdunarodnye dogovory v praktike kostitutsionnogo pravosudiya: materialy Vserossiyskogo soveshchaniya (Moskva. 24 dekabrya 2002 goda) [Generally recognized principles and norms of international law, international treaties in practice of constitutional justice: materials of the All-Russian conference (Moscow, 24 December 2002)],* Moscow, 2004, p. 238.

rights and obligations an individual will know how to behave without possible negative consequences. [57]

Certainly, some NGOs and other institutions conduct translation of the ECHR judgments on their own. But such translations have purely informative nature, and cannot be referred to by national courts in their decisions.

We can therefore conclude that in order to give the opportunity to Russian Courts to refer to the ECHR judgments as official sources in the course of the consideration of particular cases and bringing law-enforcement practice in accordance with standards of the ECHR it is necessary to create a system of official publication of translations of the ECHR judgments, at least of those judgments which are adopted against Russia.

Another idea for the improvement of the application of the ECHR practice in the Russian Federation, proposed in the scientific literature, consists in the determination of specific measures that must be undertaken by the state in case of recognition of fact of the Convention (Protocols to it) violation.

Firstly, according to Prof. V. V. Lazarev, legal acts which are recognized as contradicting the Convention should be revoked or officially interpreted in accordance with the ECHR resolutions. [58]

Secondly, a certain mechanism of reconsideration of national court decisions on the grounds of adoption of the ECHR judgment should be developed.

As mentioned above, Russian legislation establishes that ECHR judgments are a ground for the re-opening of proceedings at the national level only in criminal and arbitral cases. In the civil procedural legislation such ground for reconsideration of the national court decision is not provided. Before the Russian Federal Constitutional Court adopted its Decree dated February 2010, mentioned above, such gap in the Civil Procedural legislation caused problems in the course of adoption of individual measures following the ECHR judgments. [59]

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57 A. R. Sultanov: «Vliyanie na pravo Rossii Konventsii o zashchite prav cheloveka i osnovnykh svobod i pretsedentov Evropeiskogo Suda po pravam cheloveka [Influence of the Convention on Protection of Human Rights and Fundamental Freedoms and Precedents of the European Court of Human Rights on Law of Russia]», *Zhurnal rossiyskogo prava*, No. 12 (2007), pp. 85-93.

58 V. V. Lazarev, E. N. Murashova: «Mesto resheniy Evropeiskogo Suda po pravam cheloveka v natsionalnoi pravovoi sisteme [The Place of the ECHR Judgments in the National Legal System]», *Zhurnal rossiyskogo prava*, No. 9 (2007), pp. 110-124.

59 For example, in cases *Kulkov and others v. Russia* (Nos. 25114/03, 11512/03, 9794/05, 37403/05, 13110/06, 19469/06, 42608/06, 44928/06, 44972/06 and 45022/06, 8 January 2009), and *Kot vs. Russia* (No. 20887/03, 18 January 2007) the ECHR established the violation of Article 1 of Protocol No. 1 and Article 6 of the Convention, and in case *Fedotova v. Russia* (No. 73225/01, 13 April 2006) the violation of Article 6 of the Convention, that occurred in the course of the consideration of cases of the corresponding individuals by national courts. However, individuals A. A. Doroshok (applicant under *Kulkov and others v. Russia* case), A. F. Kot, and E. Yu. Fedotova saw their cases rejected in reconsideration of the corresponding national courts decisions under their applications referring to the respective ECHR judgments. Further on, these same three individuals addressed complaints to the RF Constitutional Court, upon

On the basis of Item 4 of Article 15 of the Russian Federation Constitution that establishes the precedence of the Russian Federation international treaty provisions, the Russian Federation Constitutional Court concluded that Article 392 of the Civil Procedural Code, that provides for the grounds for reconsideration of decisions in civil cases upon discovery of new facts, cannot be considered as allowing a Russian court to withhold reconsideration of its decision upon discovery of new facts under the individual's application in case if the ECHR has established a violation of the Convention provisions in the course of consideration of this specific case in which the decision had been adopted. The referred Constitutional Court Decree has had a great impact on Russian courts which have to apply corresponding provisions of the Russian legislation in accordance with the interpretation given by the Constitutional Court. However, it is not enough. As the Constitutional Court decreed, Article 392 of the Civil Procedural Code must be amended accordingly in order to secure proper execution of the ECHR judgments and maintain a proper uniform legal regulation within the limits of civil proceedings [60] (the legislator is obliged to introduce corresponding amendments as per the named Decree of the Constitutional Court).

As to the mechanism of reconsideration of national courts decisions established by the Russian Federation Criminal Procedural and Arbitral Procedural Codes, it requires a more detailed development and regulation. [61]

Therefore, in order to increase the effectiveness of the ECHR judgments execution in the Russian Federation first of all it is necessary to solve certain problems of technical nature by undertaking at least the following three measures:

- To create a system of official publication of the ECHR judgments in Russian language.

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consideration of which the Constitutional Court adopted the Decree dated 26 February 2010, mentioned above.

60 *Postanovlenie Konstitutsionnogo Suda Rossiyskoi Federatsii ot 26 fevralya 2010 g. N 4-P «Po delu o proverke kostitutsionnosti chasti vtoroi statii 392 Grazhdanskogo protsessualnogo kodeks Rossiyskoi Federatsii v svyazi s zhalobami grazhdan A. A. Doroshka, A. E. Kota i E. Yu. Fedotovoi» [Decree of the RF Constitutional Court dated 26 February 2010 No. 4-P «In case on constitutionality test of Item 2 of Article 392 of the RF Civil Procedural Code in connection with complaints of individuals A. A. Doroshek, A. E. Kot and E. Yu. Fedotova»],* (available online at: *www.rg.ru/2010/03/12/ks-kodeks-dok.html*; last visited: 11 September 2010).

61 For example, some authors have pointed out the imperfection of some legal regulations, particularly in relation to mechanisms of reopening of proceedings provided for by the Arbitral Procedural Code and Criminal Procedural Code, according to which proceedings may be re-opened only under the application of the individual/organization in whose favour the ECHR adopted a judgment. Rights of other individuals and organizations, against whom national courts adopted decisions on the basis of legal acts not complying with the European Convention or Protocols, are not protected.

- To determine the terms and mechanisms for the removal of legal acts recognized as contradicting the Convention and Protocols from the national legal system.
- To determine the order of reconsideration of the court decisions adopted in violation of the Convention and Protocols provisions or on the basis of legal acts which were recognized by the Court as contradicting the Convention and Protocols.

Additionally, it is necessary to clarify the nature and meaning of the ECHR judgments for a uniform consideration of these acts by the law enforcement bodies and officials, especially courts the activity of which is directly connected with a consideration of the human rights violations.

4. CONCLUSION

Poverty seems to be a natural consequence of the society development, and it is impossible to eradicate it totally. The level of economic and social development of all the states differs, and therefore, there are also different levels of people's life, poverty lines are calculated at different level, and the percentage of people living below the poverty line varies from country to country. However, since poverty is strongly connected with human rights violations it is possible to reduce the poverty level by means of protection and maintenance of human rights. Various rights should be secured so that individuals could improve their material status, and living conditions. Certain rights provided for by the European Convention and Protocols to it in this context are the most important.

Therefore, the work of the ECHR as an international tribunal considering cases in violation of human rights plays a significant role in the process of poverty reduction. Its work influences on poverty reduction in different forms.

It should be noted that ECHR could not greatly influence on poverty reduction in the world if its judgments were related only to specific cases of violations of rights of individuals, but did not apply the institute of «pilot-judgment procedure» and if it did not influence on other states that are not the parties to specific cases.

Therefore, firstly, the ECHR work influences on a particular state that is the party to the case.

In a specific case the ECHR can oblige the respondent state to pay just satisfaction, to undertake individual measures to eliminate the cause which has lead to violation of the Convention (Protocols to it) in such way the respondent state restore the rights of the individual applied to the ECHR, and –that is the most important form of the ECHR influence on poverty reduction–, to undertake general measures to prevent further similar violations. In the «pilot-judgment procedure» the obligation to undertake general measures plays a special role in the context of the poverty reduction since its fulfillment is aimed at the solution of

a systemic problem that causes similar violations of rights of a large group of individuals.

Secondly, the ECHR work has an impact on third states that are not parties to specific cases.

On the one hand, the ECHR judgments are obligatory for third states in part where they give interpretation of the content of rights provided for by the Convention and Protocols to it. Therefore, the ECHR helps the Contracting States to prevent violations of human rights which the Court considers in cases against other states. Third states that discover similar violations or the possibility of similar violations by themselves, in purpose of acting in good faith in fulfillment of international obligations (before the corresponding reaction of the ECHR) can and should correct legal situations that are not in compliance with the Convention and Protocols to it.

On the other hand, an important tendency is that the national courts of the Contracting States (as illustrated in the case study of the Russian Federation), besides referring to the ECHR judgments when interpreting provisions of the Convention and Protocols to it, apply the ECHR judgments in their practice also in order to evaluate specific ideas and situations, for taking into account the ECHR legal prepositions and its precedent practice in order to unify their own legal prepositions (e.g., in relation to certain legal categories, understanding of principles of law, etc.), and as a ground for reconsideration of their decisions.

Existence of such various forms of influence of the ECHR work on the Contracting States practices definitely increases the feasibility of poverty reduction process in States.

Certainly, there are problems (mainly, of technical nature) that arise in the course of the execution and application of the ECHR judgments by states (and national courts, in particular), which differ depending on law and practice of each particular state. The increase of the effectiveness of the ECHR work –that is already being conducted since Protocol No. 14 to the Convention entered into force–, and the solution of the problems that prevent a successful execution and application of the ECHR judgments –including the clarification of the nature and role of its judgments at national levels of the Contracting States–, will contribute to the real provision of poor people with human rights, and therefore, to poverty reduction.