Working Papers WP 2018-11
Centre for German and European Studies (CGES)

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Constitutional review of the status of the European Convention on Human Rights and decisions of the European Court of Human Rights in Germany

WP 2018-11

2018
№ 11

Bielefeld / St. Petersburg

Bielefeld University

St. Petersburg State University

Centre for German and European Studies (CGES)

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The first draft of this paper was selected as the best one presented at the 2018 CGES Annual Workshop on Research Methodology, Conceptualisation, Design, and Presentation. This entitled the author to a CGES grant for a research stay at the Law Library in Free University of Berlin, which resulted in the current version of the paper.

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ISSN 1860-5680

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Abstract

The article presents an analysis of the mechanism for implementing decisions of the European Court of Human Rights (ECtHR). This mechanism was specified by the Federal Constitutional Court of Germany. The status of the Convention is studied in many fields of science. This research considers only the legal factors of Council of Europe standards perception. Conclusions on the important mission of the European Convention on Human Rights and its influence on the German legal order, the openness of the Basic Law to international human rights protection with regard to rule of law principle were drawn. Moreover, I investigated the relevance of two theoretical models regarding the ratio between international and domestic law to the German legal order. The article examines the approaches to the enforcing of resolutions of the ECtHR in Germany, reveals the mechanism for implementing the decisions of the ECtHR and provides an overview of ways to solve the conflicts with national law described in German legal practice and literature. The main conclusion is that the Federal Constitutional Court of Germany is a special institution to develop an algorithm for taking into account the decisions of the ECtHR by German courts. A study of the German way of understanding the Convention and ECtHR role may interest Russian scholars in the field of constitutional law and other fields.

Keywords: European Convention on Human Rights, Federal Constitutional Court of Germany, human rights protection, implementation of decisions of the ECtHR.

Introduction

The status of decisions of the European Court of Human Rights has interested researchers in various fields. Therefore, the problem is being investigated by experts in international relations, sociology, cultural studies and, of course, law. Undoubtedly, the focus of the investigations differ depending on the main aspects to explore. The aim of this paper is to study the problem using the methodology of legal research. I collected and analyzed relevant empirical data (FCC and FSC of Germany practice, ECtHR decisions), studied theoretical fundamentals of the ratio between international and domestic law. Moreover, I focused on the statements of the Basic Law of Germany in order to interpret them systematically to understand the constitutional fundamentals of the Council of Europe standards perception.

The fundamental principle of international law and international relations is to execute international treaties (Art. 26 of the Vienna Convention on the Law of Treaties). In this context, the study of the phenomenon with the help of legal methodology allows us to draw conclusions about the existing mechanism of Council of Europe standards implementation in Germany. The object of the study should be interesting for Russian audience and all researchers in East European studies because of the controversial solution of the problem of implementing the decisions of the ECtHR. To answer this question for the Russian audience a researcher can appeal to the experience of Germany using the following criteria. Firstly, Russia and Germany are both members of the Convention for the Protection of Human Rights and Fundamental Freedoms. Secondly, both legal systems belong to the continental system. Thirdly, Russian Constitution and Basic Law of Germany deal with the values of the rule of law. In addition, the functioning of national constitutional courts, which play a special role in the process of implementing the Council of Europe standards, is based on similar principles.

The article examines the approaches to the enforcement of resolutions of the ECtHR in Germany, reveals the functioning of the mechanism for implementing the decisions of the ECtHR and provides an overview of the ways to solve the conflicts with national law described in German legal practice and literature. To reach conclusions I use different data such as the legal practice of the Federal Constitutional Court of Germany (the FCC), the problem comment on the European Convention on Human Rights and monographs and articles by German scholars in the field of the perception of Council of Europe standards.

International treaties and more on the theoretical basis (monistic and dualistic models in international law)

The Federal Republic of Germany is one of the first members of the European Convention on Human Rights, which was ratified in Germany on December 5, 1952. For the new democratic government, it was a matter of principle to confirm its readiness for cooperation with other European states, emphasize the value of this international mechanism for Germany. By the way, the German Democratic

Republic (GDR), born in 1949, remained under control of the Soviet Union without any international mechanism for the protection of human rights. After the fall of the Wall of November 9, 1989, formally on October 3, 1990, no specific legal instruments were needed to bring the territory of the former GDR in the area of Convention action (Tomushat, 2010: 514).

The status of the Convention in the national legal order is due to many factors: the perception model, values of the member state, the political system, the level of legal awareness of the authorities.

Germany emphasizes the special character of the Convention as an international catalogue, treaty on human rights, and states need to interpret the Basic Law (*Grundgesetz*) itself in accordance with the Convention (Von Gall, Kujus, 2017: 81). Thus, when Basic Law is read in accordance with the Convention, the practice of the ECtHR is implemented into the national legal system in the best possible way (FCC of Germany, 2011). The European Convention on Human Rights, despite its status of federal law in Germany, is important for constitutional control because its constitutional and legal significance (Papier, 2007). Some authors suggest that the Strasburg mechanism of human rights protection has a supranational nature (Art. 24 of the Basic Law), so the way of implementing the ECtHR practice is the same as it is for European Union standards (Walter, 1999). There is no need to argue so strictly. Constitutional significance means the impossibility of issuing rules contrary to the Convention. The European Convention on Human Rights influences the interpretation of fundamental rights and the rule of law (*Rechtsstaatlichkeit*), as enshrined in Basic Law. Therefore, the text of the Convention and the practice of the ECtHR serve as interpretative tools of German norms of constitutional nature (Hoffmeister, 2006: 724).

There are two classic models of the ratio of international and domestic law, which can be used to solve the problem of Council of Europe standards perception. From the monistic position international and state law are parts of a single legal system. An international treaty creates obligations for a state without any special act of implementation. Both international treaties and national legislation determine whether actions are legal or illegal. There are some weighty advantages of the monistic model. For example, a state adopts a human rights treaty, such as the International Covenant on Civil and Political Rights, but some of its national laws restrict the freedom of the press. A citizen of that country who is being prosecuted by his state for violating this national law may refer to the human rights treaty in a national court and may ask the judge to apply this treaty and decide the invalidity of national law. There is no need to wait for national legislation that translates international law. Moreover, the government may be uninterested in translating this law or even unwilling to do so because the international treaty may could be adopted only for political reasons, for example, to meet the requirements of donor countries.

According to the dualistic view, international and domestic law do not form unity, but represent two separate legal systems. Obligations derived from international law relate to state relations with other states. Thus, according to the dualistic representation that considers international and domestic law independent legal systems, the implementation of international standards in national law is needed.

Without this translation, international law does not exist as a special regulator. Citizens cannot rely on this, and judges cannot use it. National laws that contradict it remain enforced. According to classic dualism, national judges only apply international law that was translated into domestic regulations.

In 1899, the German scientist H. Triepel published a monograph “International and Domestic Law” (*Völkerrecht und Landesrecht*) (Triepel, 1899), in which he outlined the theory of dualism. Behind the researcher there is a question of the conceptual contradiction between international and domestic law. In my opinion, it is obvious that when states create international law guided by the principles of their national law, they do not intend to contradict foundations of their social and political systems. In this case, states do not sign agreements, the implementation of which would require significant changes in their national law. In dualism, a possibility of an action of international law on the national arena is understood as the supremacy of state power. However, national law is not being implemented on the international arena; therefore, states do not have the right to refer to their domestic law when resolving international issues. Nevertheless, H. Triepel also argued that international and domestic law are closely in contact, and their interrelation is that there are issues that can only be solved through the transformation of the law of one system into another (Triepel, 1899).

The Basic Law and the Convention are the phenomena of different systems, therefore their relationship is not universal across states, but is carried out in each nation-state in a unique way depending on the international treaties perception model. In Germany, in accordance with Art. 59 par. 2 of the Basic Law, the Convention has the status of a federal law, as federal laws developed by the national parliament. In relation to the Convention, this treaty was incorporated into national law by the legislature. The implementation determines the perception of the Convention not as a catalog of generally accepted principles and norms of international law, but as an international treaty, as emphasized by the Federal Constitutional Court of Germany (FCC of Germany, 2004). On the one hand, it seems that Germany is not bound by the standards of the Convention and can cancel them by applying the *lex posterior derogat legi priori* (later law removes the earlier) principle. At first glance it may be seen as a violation of international law by the country – willingly or unwillingly. On the other hand, the values of the Basic Law on the observance of human rights and its openness to the perception of international legal standards do not allow to draw such a conclusion. In the Basic Law of Germany includes the principle of respect for international law, as named in the German doctrine (Sauer, 2008). Thus, the Basic Law opens with a section on fundamental human rights. In addition, the openness lies in the duty of following the rule of law. Moreover, openness also means ascribing the constitutional dimension of an international Convention establishing a regional system for the protection of human rights, both disclosing and based on the openness of the Basic Law in relation to international law in general. The Basic Law requires that German state authorities participate in international cooperation (Art. 24 of the Basic Law) and European integration (Art. 23 of the Basic Law) (Hoffmeister, 2006: 724). As an applicable federal law, the Convention is binding for all bodies and courts (Art. 20 par. 3 of the Basic Law).

Role of the European Court of Human Rights

European Court of Human Rights' mission is to protect human rights and fundamental freedoms provided for by the Convention but this function is twofold. Firstly, ECtHR makes judgements about violations of the Convention in a particular case, secondly, it interprets the provisions of the Convention. Rulings of the ECtHR reflect the current development of the Convention. This definition is related to the conception of "Convention as a living instrument" and the evolutionary approach of the European Court of Human Rights to its interpretation (Dzehtsiarou, 2011: 1733).

Let me introduce the H. Lübbe-Wolff view, who believes that national authorities should understand that the framework of the international system of human rights protection and the authorities' view on the content of rights does not always suit the ECtHR position (Lübbe-Wolff, 2012). So joining the Council of Europe means accepting the jurisdiction of the ECtHR. In Germany, despite the formal Convention status of federal law, this opinion is accepted by the German state authorities and *de facto* supported by the Federal Constitutional Court of Germany. In addition, the ECtHR provides a margin of appreciation if local authorities respect procedural guarantees and implement appropriate measures to balance competing interests. The quality of parliamentary and judicial review of the need for action is very important to indicate how the ECtHR decision is executed.

European Court of Human Rights does not seek for identical legal norms, but rather strives to monitor convergence between states (Sauer, 2008: 542). Thus, the ECtHR should always see both sides of the coin. On the one hand, it should ensure the correct interpretation of the Convention, at least in relation to the minimum standards set out in the text. On the other hand, it must respect the margin of appreciation, which the Convention grants to national authorities. While the first consideration requires active interpretation of the Convention, the second may imply greater caution and restraint (Garlicki, 2008: 512).

In a sense, it seems necessary to spell out certain procedural prerequisites for the boarders of margin of appreciation. Granting of discretion to nation-states depends primarily on the availability of sufficient and effective remedies open to the applicant at the national level, so that the court can reconsider a potential violation of fundamental rights. In addition, the decision made by the national authorities must result in a reasoned decision that diligently take into account and balances the fundamental rights of the applicant. It should be welcomed that the Court uses arguments based on consensus as a legitimation strategy to justify and rationalize evolutionary interpretations. However, in many cases, consensus does not mean that all member states will agree to a specific evolutionary interpretation of the ECtHR. In this situation, consensus-based reasoning needs additional legitimization to achieve a sufficient level of general legitimization. This additional legitimization can be achieved by providing a margin of appreciation, which depends on procedural criteria. Combining the European consensus with a procedural discretionary approach agrees on the impact of the European

consensus and the need for a democratic debate. Combining the European consensus and margin of appreciation, the ECtHR links and mutually reinforces the content and procedure (Kleinlein, 2017: 892-893).

The retired judge of the ECtHR G. Ress notes that the ECtHR rulings only direct the member states (Ress, 2002). The obligation of the ECtHR jurisdiction to the state party to the Art. 46 para. 1 of the Convention, firstly, provides the need to execute decisions against Germany. When about it comes to decisions against other member states, the legislation in Germany should be analyzed for its conformity with the precedent made by the ECtHR. If it is necessary, there are changes in current statutes (FCC of Germany, 2011). For example, the German government indicated that the creation of a new remedy for lengthy trials was deemed necessary in the light of the ECtHR practice (Keller & Sweet, 2009). According to the Government, this remedy, the creation of which was deemed necessary in the light of the Court's decision in the case "Kudla v. Poland" (application No. 30210/9), would ease the burden of the Federal Constitutional Court regarding such complaints. The duration of the proceedings in the future will have to be brought before the court hearing the case, or, if this court refuses to take steps to expedite the proceedings, to the appellate court (case "Sürmeli v. Germany", application No. 75529/01). At this point, the ECtHR is a guide for national authorities in human rights protection.

In Germany the main role in the Convention standard incorporation in particular cases is played by courts. There exists an institution for reviewing decisions of national courts in connection to decisions adopted by the ECtHR. Moreover, it is not a current concern of the Federal Constitutional Court. In this regard, such authority is given only if there is a request from the subordinate court in relation to the discrepancy of the applicable norm with both the Convention and the Basic Law (Art. 100 of the Basic Law). Being a "formal model", it is about the legitimization of international judicial institutions and the adaptation of the model developed for the German national courts to the international sphere (Kleinlein, 2017: 881).

In general, the relations between the European Court of Human Rights and the Federal Constitutional Court of Germany are characterized as mutual influence, which is expressed, firstly, by the European Court of Human Rights borrowing of the approaches of the FCC. For example, there was an impact of the rulings of the FCC on life imprisonment on the ruling in the case "Vinter v. United Kingdom" (applications No. 66069/09, 130/10 and 3896/10). The Federal Constitutional Court has recognized that depriving a person of his liberty without providing any chance of ever acquiring freedom would be contrary to the provisions of the Basic Law on personal dignity. According to the FCC, in a society with human dignity as a higher value, the prison administration should strive for rehabilitation of those sentenced to life imprisonment. In an earlier ruling on the case "Klass and others v. Germany" (application No. 5029/71), the ECtHR also agreed with the conclusions of the FCC of Germany regarding notifying a person on undercover surveillance. Secondly, the FCC uses the arguments of the ECtHR in its judgments because of the doctrine of the "Convention as a living instrument". In addition, according to the position of the ECtHR, the FCC of Germany is an effective remedy because of an existent complete constitutional complaint.

Therefore, regarding submitted complaints against Germany to the ECtHR, the FCC of Germany already had a legal position. Submission of such a constitutional complaint is a requirement of the exhaustion of local remedies required in order to open a way to Strasburg (Art. 35 (1) of the Convention) (Grabenwarter & Pabel, 2012). The Federal Constitutional Court can be described as a mediator between the Basic Law and European standards. In contrast, the FCC is not (and has never been) a force of inhibition in this process. On the contrary, it has always worked on the integration to protect human rights at higher level (Vosskuhle, 2010: 178-179).

There is a need for a considered approach to the evaluation of decisions of the ECtHR by national courts for the effective legal protection and individual measures (FCC of Germany, 2004). As A. Nussberger notes (Nussberger, 2014), in Germany there is no special order to monitor measures of executing judgments of the ECtHR against Germany and the arisen problems are resolved on the basis of the general procedure for changing national legislation. This way based on the provision of the Convention as a federal law and the small number of ECtHR judgments against Germany. If the European Court of Human Rights establishes a contradiction of norms of the German legislation to the Convention, domestic law should be interpreted in the international legal aspect, or the legislator should change the regulation. The procedure does not differ from ordinary lawmaking. However, the main role is given to the executive authorities as special bodies in solving problems in the particular sphere. When it comes to violating the Convention by issuing an administrative act, the statutes of the Administrative Procedure Law of Germany provide the national authority and judges with the right to revoke this act (Hoffmeister, 2006: 725).

Federal Constitutional Court of Germany on the perception of ECtHR decisions – which model does this case correspond to?

A search for balance between national and international regulations was carried out by the FCC of Germany in the “Görgülu case”, where the problem was the multidimensional relationship between the basic rights protecting the biological father and the adoptive parents as well as the child (FCC of Germany, 2004). A citizen of Turkey, Kazim Görgülü, lived in Germany. In 1999, he had a son in Germany, with whose mother Görgülü separated before the child was born. Immediately after birth, the mother abandoned the child and passed it on for adoption. A few months later, the father found out about the birth of his son and demanded his fatherhood to be recognized. In 2001, the court decided to transfer the child to the father. However, the appellate court refused to hand the child over to the father and revoked the father’s right to see his son, protecting the interests of the child. The ECtHR acknowledged that refusing to hand a child over to a father without sufficient research on what would affect the child more — the immediate stress of being separated from a foster family or the potential long-term effect of being separated from a biological father — violates the Convention (case “Görgulu v. Germany, Application No. 74969/01). The court in Wittenberg

(*Amtsgericht Wittenberg*) again decided to hand the child over to the father. Prior to the entry into force of the ruling, the court granted the father the right to meet with his son for two hours per week. However, the appellate court in Naumburg (*Oberlandesgericht Naumburg*) canceled both the visitation permission and the decision to transfer the child. According to the position of the Federal Constitutional Court, the German government is obliged to respect and apply the Convention. Thus, in the "Görgülu case", the Federal Constitutional Court rejected the *Oberlandesgericht Naumburg* argument that the Convention only binds the state, not its bodies. Not to take into account the decisions of the ECtHR and, consequently, standards of the Convention, this ignoring violates rights provided for by the Basic Law, in their relationship with the rule of law. Moreover, in 1987 the FCC stressed that German laws should be interpreted and applied in accordance with international obligations, even when such laws were ratified after the applicable international treaty. It cannot be assumed that the legislature, since it has not explicitly declared otherwise, wishes to ignore obligations under the international treaties of Germany or to contribute to violation of such obligations (Keller & Sweet, 2009). Thus, the FCC provided for the right to invoke a violation of the Convention, in accordance with Art. 20 par. 3 of the Basic Law, in conjunction with the basic law relating to a particular case, which would take effect in any case when a German court or other authority did not take into account the judgment of the ECtHR. The concept of "accounting" is much weaker than the usual terminology, which uses the words "to comply with" and "to abide by." In fact, the distancing from the usual model of compliance is underlined particularly in "Görgülu case" (Tomushat, 2010: 523).

The Federal Constitutional Court not only set the balance of values in this particular case, but also defined the positions on the status of the Convention and the mechanism of perception of ECtHR decisions in the German legal order. If the findings of the ECtHR ruling are not taken into account, there will be a violation of the standards of the Convention, so the provisions of the German civil procedure legislation would be violated. In itself, the obligation to analyze a decision of the ECtHR does not violate the independence of the judiciary (Art. 97 par. 2 of the Basic Law). The Federal Constitutional Court emphasizes the need to use the Convention as an interpretation tool of the content of fundamental rights and the rule of law. Finally, the FCC stressed the importance of the principle of the simultaneous application of both the European Convention on Human Rights and the Basic Law (Garlicki, 2008: 520).

Let me introduce some examples of reviewing legal practice, when the position of national courts did not coincide with the view of the ECtHR on confirming Germany's commitment to international human rights law. There are cases of such reviews in the Federal Supreme Court of Germany. For instance, the situation after the ECtHR decision on the case of "Caroline von Hannover vs. Germany" concerning the limits of the protection of the right to privacy for celebrities. The case regarded photos of the princess, which depicted her romantic relationship, leisure, including photos in a bathing suit, and those published in German magazines "Bunte", "Freizeit Revue" and "Neue Post". In the beginning of this long trial, the Federal Constitutional Court of Germany concluded that the applicant's right to privacy was limited by two criteria: functional (the applicant was a public person, the daughter of Prince of Monaco

and the President of several Foundations, the Spouse of the Prince of Hannover) and territorial (photos were taken outside her private property). After the judgment of the FCC of Germany, a complaint was filed with the ECtHR. After the consideration of this complaint, the right of Carolina Hannover was found to be violated. The functional criterion was deemed necessary to assess the degree of restriction of the right, but the territorial criterion was chosen incorrectly, according to the ECtHR. The ECtHR noted that the purpose of the media is the development of a democratic society and the activities of the media should be aimed at forming public opinion on certain socially important issues, and not satisfying anyone's curiosity (case "Von Hannover v. Germany", Applications No. 40660/08 and 60641/08). Therefore, the purpose of the publication of these photos was to put the Princess in a uncomfortable situation. This action restricts the right of a public person to privacy. In its decision, the Federal Supreme Court of Germany that reviewed the case took into account the criteria developed by the ECtHR. European Court transformed the idea of limited protection of "modern outstanding figures" into the idea of a difference in protection, which was positively evaluated by the ECtHR as measure taken by the state to stop the violation of the applicant's rights. The legal position of the Federal Supreme Court of Germany essentially meant German authorities agreeing with the ECtHR view. It should be noted that the FCC of Germany finally showed support for the position of the Federal Supreme Court of Germany, pointing out that incomplete and incorrect determination of the limits of a basic right, incorrect balancing would be a violation of the Basic Law if the Convention's requirements were not taken into account.

In the practice of the FCC of Germany there have been cases of reviewing one's own practice after the issue of the ECtHR ruling. In 2004 (case "M. vs. Germany"), there were no any violations of the current legislation, but in 2011 the FCC of Germany recognized the appealed provisions of the criminal procedure legislation to be not in compliance with the Basic Law (Nussberger, 2014:10). Here there is an example of the reception of the ECtHR position by the constitutional control body. On the contrary, in its decision, the FCC of Germany differs the "punishments" and the "corrections and warnings", thereby adapting the decision of the ECtHR to the national legal features. Furthermore, the European Court of Human Rights positively regarded this approach by the FCC of Germany as giving clear recommendations to German courts and the legislator (case "Kronfeldner. v. Germany", application No. 21906/09).

In practice, in Germany there have been no real cases of contradiction between ECtHR precedents and constitutional principles. There have been only some cases on the conflict with the current legislation (in the "Caroline von Hannover case"), as well as different subjects of main protection in "Görgülu case". However, the FCC of Germany state a direct legal position on possible cases of non-execution of ECtHR decisions. Firstly, this exception takes a place in the situation of provision of guarantees by national legislation at a higher level, secondly, when ignoring the decision of the ECtHR is the only way to avoid a violation of fundamental constitutional principles. This exception means that if the implementation of such ECtHR decision violates the German legal order with its values of the priority of human dignity, the rule of law and the social state. These aspects of the decision, otherwise friendly to international law, have some

sovereignty-oriented caveats attached (Hoffmeister, 2006: 729). By the way, the legal position was taken into account by the Constitutional Court of Russia in its Judgment No. 21-P of July 14, 2015. Referring to the content of this statement, there is no possibility of making unreasonable decisions about non-perception of ECtHR judgments. Federal Constitutional Court of Germany emphasizes that this measure is extreme, for its application there must be a contradiction to the fundamental constitutional principles. In addition, this conclusion corresponds to the constitutional and legal significance of the Convention in the German legal order as a federal law of a constitutional importance.

After having considered the actual status of the Convention and the procedure for the implementation of the decisions of the ECtHR in Germany, I turn to the question of the model of the ratio between international and domestic law.

The main point is that international law does not determine which point of view is preferable: monism or dualism. Each state decides for itself in accordance with its legal traditions. International law only requires that its rules are respected, and nation-states are free to choose how they want to follow these rules and make them binding for their citizens and institutions. Both monistic and dualistic states can abide by international law. The most important thing here is the readiness to apply international law in national legislation and to respect international law by legislators and judges. Moreover, the real situation is that no state system is strictly monistic or dualistic.

Currently in Germany we are talking about modern dualism. The main conclusion is to reject the opposition between international law and state sovereignty.

A. Blankenagel points to a problem that exists in the countries of dualism in relation to the perception of the practice of the ECtHR: a sovereign state cannot assume obligations more than the national Constitution and its values allow. Therefore, taking into account new and more progressive positions of the ECtHR, constitutional justice bodies always balance between violation of the legal obligation that the state has taken upon itself and the obligation to execute an international treaty, and the constitutional order, which in this legal relationship system is in legal force (Blankenagel, 2016: 144). In my opinion, the legal categories of international law and state sovereignty are necessarily linked with each other. International law is unthinkable without sovereign states, but the state cannot exercise supreme power without sovereignty (Gavrilov, 2018: 138). Modern dualism implies sovereignty as a power within the state and independence from any higher authority in international relations. However, independence of nation-states, which is governed by international law, is not excluded. Within the framework of international cooperation, competencies of an operational nature are transferred, which are not the element of a state's sovereignty. This transfer is due to strengthening of globalization, international integration, which coincide with the goals of the member states.

Conclusion

To summarize, the Federal Constitutional Court of Germany developed a theoretical basis for taking into account the decisions of the ECtHR in practice and argued it by rule of law principle.

When signing the Convention, states voluntarily assume the obligation to comply with the standards of the Convention, and the standard of human rights protection is minimal. States can only provide a higher level of human rights protection. Undoubtedly, the standards developed by the European Court of Human Rights change not only the legislation in the particular branch of law, but also influence the legal culture in general. The jurisprudence of the FCC confirms its readiness to merge its practice with the jurisdiction of the ECtHR to form a consolidated instrument for the protection of human rights with two pillars: the Basic Law and the Convention (Tomushat, 2010: 526). International and domestic law must be in agreement with each other. National legislation must not contradict international. If such contradictions occur, the state is obliged to harmonize its internal order according to its international obligations. However, the development of international cooperation does not contribute to limitation of sovereignty, but only transforms it. This means the transfer of some competences of the nation-state on the interstate level.

A thoughtful study of the German way of understanding the European Convention role and the way this state implements the decisions may be useful for Russian legislators and the Constitutional Court as a special institution for ensuring the balance between Council of Europe standards and the Russian constitutional order. The German approach helps to see the way of Council of Europe implementation in Russia, what are the problematic aspects and how they could be addressed. We cannot overlook the Russian Constitutional Court's intention to study foreign approaches of ratio of international and domestic law. However, the "Görgülu case" could not be considered as an example for non-execution of ECtHR decisions. The FCC of Germany remarks on the superiority of the Basic Law (which is an *obiter dictum* in this case, if using Anglo-Saxon jargon), but completely ignores the basic rule (*ratio decidendi*) about the need to fulfill the international obligations, on the basis of which the "Görgülu case" was resolved.

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