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**LEGAL POSITIONS
OF THE EUROPEAN COURT OF HUMAN RIGHTS:
THEIR PLACE AND IMPORTANCE IN THE CIVIL LAW OF RUSSIA**

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The relevance of the research topic is manifested in the following aspects. Russia's stay under the jurisdiction of the European Court of Human Rights (hereinafter referred to as the ECtHR) has left its mark on Russian law, since the legal positions developed by it over many years of practice in interpreting the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the ECHR), its special supranational status — were the factors influencing the development of legislation, bringing it into line with European standards was considered an important task. This is the socio-political aspect of the relevance of the topic.

The doctrinal aspect of relevance is that the assessment of the impact of the legal positions of the ECtHR on Russian civil legislation has been carried out little. Such research is complicated by its intersectoral nature, the lack of uniform approaches to many legal issues. Remain debatable: understanding the legal nature of the decisions of the ECtHR and the legal positions contained in them, resolving conflicts between acts of the Constitutional Court of the Russian Federation and the ECtHR. The autonomous interpretation of the terms and concepts used by the ECtHR raised the problem of their different understanding in Russian civil law, which led to a conflict between conventional and national law.

Legislative and enforcement aspects. The influence of the ECtHR on the reformed civil legislation requires a detailed analysis to reveal possible contradictions in order to optimize legislative work. The development of legislation based on advanced European experience, but taking into account the specifics of the Russian legal system and sociocultural characteristics, makes it possible to find more optimal ways of integration into the global legal field. The study of European legal positions allows us to identify general trends in the development of civil legislation and law enforcement in Western legal orders with further reasonable implementation in the Russian legal system.

The degree of scientific development of the topic. The topic under study is not sufficiently covered within the framework of civil law. Various aspects of the conventional protection of human rights have been actively studied in Russia, but

the bulk of the work concerned procedural issues of applying to the ECtHR, as well as the subject's realization of the right to international protection; many works are devoted to analyzing the impact of the legal positions of the ECtHR on domestic criminal law, criminal and civil proceedings, others industry.

Works of a number of foreign scientists (O. M. Arnardóttir, A. de Benoist, A. Blankenagel, A. Bodnar, M. O'Boyle, M. Carss-Frisk, U. Kilcaley, H.-Y. Papir, M. de Salvia, E. Tanchev, K. Warbrick, M. Fyrnys, D. Harris, L. R. Helfer, W. A. Shabas), including former and current judges of the ECtHR (A. Bragyova, Kh. I. Gadzhiev, L. Garlitsky, L. Loukaides, A. Nussberger, F. Tulkens, D. Spielmann), are devoted to certain features of the ECHR interpretation and the practice of implementing ECtHR judgments in other countries.

Russian scientists have studied general problems of protecting human rights, including within the framework of compliance with international obligations. Some specific aspects have been the subject of research of S. F. Afanasyev, P. N. Biryukov, G. A. Gadzhiev, Kh. I. Gadzhiev, M. L. Galperin, D. I. Dedov, V. D. Zorkin, A. S. Ispolinov, D. T. Karamanukyan, A. I. Kovler, V. V. Lazarev, A. A. Maksurov, T. N. Neshataeva, N. N. Pavlova, M. A. Rozhkova, L. V. Sagdeeva, V. V. Starzhenetsky, M. A. Filatova, K. L. Chaika, M. L. Entin and others.

Unfortunately, these works, despite their unconditional value, do not fully disclose the issue of the influence of the legal position of the ECtHR on the civil law of Russia, and therefore the topic seems relevant and in demand from a scientific and practical point of view.

The object of the study is a set of civil legal relations regulated by norms influenced by European legal positions formulated by the ECtHR in the course of implementing European standards for the protection of human rights in the field of civil law.

The subject of the study is the provisions of the ECHR; legal positions developed by the ECtHR in specific cases of a private law nature during the interpretation of the provisions of the ECHR; norms of Russia civil legislation that have been subject

to their influence or need it; Russian judicial practice that has adopted the legal positions of the ECtHR; works of Russian and foreign scientists on the stated topic.

The purpose of the study is to develop and substantiate a holistic civil law view of the place and significance of the legal positions of the ECtHR in Russian civil law and to identify the mechanism of their influence, as well as possible directions for the development and improvement of domestic civil legislation.

To achieve this goal, the following **tasks** are set:

- determine the legal nature of the ECtHR rulings and establish their place in the Russian legal system;
- identify the defining features of the ECtHR legal positions as regulators of civil legal relations;
- determine the mechanism for implementing the legal positions of the ECtHR in the Civil Code of the Russian Federation, which established a differentiated status of legal capacity of persons suffering from mental disorders;
- to determine, from the position of generally recognized principles and norms of international law, expressed in the ECHR, the feasibility and scope of legalization in Russia of de facto marital relations institution;
- identify and analyze the legal positions of the ECtHR that define the boundaries of the legal personality of legal entities in protecting their interests, as well as the possibility of compensation for non-property damage caused to their business reputation;
- identify and analyze the legal positions of the ECtHR that define the limits of state liability for harm caused by lawful, but dangerous for private entities, actions of state bodies and their officials;
- determine the content of the autonomous concept of “property” used by the ECHR, as well as the criteria for establishing a fair balance of public and private interests in cases of the state reclaiming residential premises from their bona fide purchasers;

- identify and study the legal positions of the ECtHR in the field of intellectual property, the possibility of their use in civil law regulation of relations regarding new and unnamed objects;
- determine the degree of compliance with the conventional level of civil law protection of a citizen's right to private life in accordance with Russian legislation.
- formulate proposals for possible changes in civil law norms regulating the issues raised in the considered legal positions of the ECtHR.

The theoretical basis of the study was the works of such civilists and legal theorists as: S. M. Amosov, S. F. Afanasyev, A. B. Babaev, V. A. Belov, P. N. Biryukov, Ya. R. Vebers, N. V. Vitruk, V. L. Volfson, A. S. Vorozhevich, E. V. Gavrilov, G. A. Gadzhiev, Kh. I. Gadzhiev, M. L. Galperin, E. M. Ginz, D. I. Dedov, A. V. Demeneva, V. M. Zhuikov, O. V. Zaitsev, S. L. Zivs, V. D. Zorkin, A. S. Ispolinov, V. A. Kanashevsky, A. A. Kartskhiya, A. I. Kovler, O. Yu. Kosova, O. A. Krasavchikov, V. V. Lazarev, M. N. Marchenko, A. G. Matveev, V. S. Nersesyants, T. N. Neshataeva, M. A. Rozhkova, A. V. Slepakova, A. R. Sultanov, E. A. Sukhanov, M. K. Treushnikov, V. A. Tumanov, M. A. Filatova, S. Yu. Filippova, K. L. Chaika, B. B. Cherepakhin, E. A. Chefranova, L. M. Entin, M. L. Entin.

The work also used the works of foreign scientists: H. R. Anderson, O. M. Arnardóttir, A. de Benoist, A. Blankenagel, A. Bodnar, M. O'Boyle, A. Bragyova, A. Buyse, L. Garlitsky, E. Zeckel, M. Carss-Frisk, G. Kelsen, W. Kilcaley, R. Coase, R. Cooter, I. Mackay, U. Mattei, A. Nussberger, H.-Y. Papir, R. Posner, A. Rengel, M. de Salvia, E. Tanchev, F. Tulkens, G. Winter, T. Uhlen, K. Warbrick, M. Fymys, D. Harris, L. R. Helfer, W. A. Shabas.

The methodological basis of the study was made up by the general scientific dialectical method, which made it possible to analyze the legal positions of the ECtHR, the mechanism of their implementation in the Russian legal system in the period before withdrawal from the ECHR. When studying individual issues, such formal logical methods as analysis, synthesis, induction, deduction, comparison and analogy were used, with the help of which the defining features of a legal position

as a regulator of civil legal relations were identified, and provisions put forward for defense were formulated. Using the method of retrospective analysis, the stages of development of interaction between the ECtHR and the Constitutional Court of the Russian Federation in the field of human rights protection were identified, and the essential characteristics of the evolutionary interpretation of the ECHR provisions were determined. The comparative legal method helped to identify certain aspects of the influence of the ECtHR practice on the civil law of European countries, and to assess the effectiveness of the reception of some civil legal institutions. The historical method helped to highlight the stages of development of legal regulation of de facto marriage relations in Russia. The systematic research method made it possible to develop criteria for the mutual restriction of the rights to privacy and freedom of expression, and to assess the problem of protecting human rights in the field of intellectual property. The current legislation, practice of the ECtHR and Russian courts were studied using the formal legal method. The need to make changes to the current civil legislation was assessed using the method of legal modeling.

The normative basis of the study consists of: ECHR; other international conventions; ECtHR rulings adopted in relation to Russia, as well as in relation to other states parties to the ECHR; recommendations and practical guidelines of the Council of Europe; Constitution of the Russian Federation; Russian federal laws and other regulations; practice of the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation, courts of general jurisdiction, arbitration courts of districts; as well as some acts of civil legislation of France and Germany.

The validity and reliability of the study results is based on the use of methods of scientific knowledge corresponding to the dissertation work, and is confirmed by the widespread use of scientific research results of domestic and foreign authors as a theoretical and methodological basis, including publications in recent periodicals, as well as analysis and synthesis of a significant amount of law enforcement materials practices.

The scientific novelty of the study lies in the fact that as a result of studying the case law of the ECtHR, which touches on certain civil issues, theoretical provisions have been formulated and substantiated, indicating the formation of a holistic scientific concept, within the framework of which: the place of the ECtHR legal positions in the Russian system of civil law sources has been established as regulator of domestic civil law relations; the presence of a law-making component in the final rulings of the ECtHR, expressed in their normativity, is substantiated; the methods and nature of the implementation of ECHR law into the Russian civil law system have been identified; based on the practice of the ECtHR, taking into account the sociocultural specifics of Russian society, the conditions and limits for the legalization of de facto marriage institution relations are determined; the purpose, methods and conditions of the evolutionary interpretation of the provisions of the ECHR applied by the ECtHR to protect the weaker party in a civil legal relationship have been identified; the need to expand the limits of state liability for damage caused by lawful actions of state bodies and their officials is justified; the possibility of using as a basis for the legal regulation of relations regarding new or unnamed objects of civil rights the legal positions of the ECtHR in the field of intellectual property, defining the boundaries of respect for basic goods (property, privacy, freedom and security); Based on the legal positions of the ECtHR, an imbalance has been identified between the constitutional rights to access to information and the protection of private life when disseminating information about it, and a way to eliminate it has been proposed.

Main provisions submitted for defense:

1. It is substantiated that the supranational (subsidiary) nature of the activities of the ECtHR, as well as the specificity of its rulings (combining precedent, law enforcement and interpretative nature) does not allow the full use of the category “source of law” to characterize the legal nature of both the ECtHR rulings themselves and the legal ones covered by them positions. At the same time, the regulatory effect of the legal positions of the ECtHR takes place, which is due to their formation: firstly, within the framework of the case law of the Court, and

secondly, as a result of the Court's evolutionary interpretation of the norms of the Convention. This allows us to classify them as legal regulators of domestic civil law relations for countries party to the ECHR. The formal sources of legal positions, as legal regulators, are the decisions of the ECtHR.

2. It is substantiated that the ECtHR rulings have a law-making component, expressed in their normativity, which is ensured with the help of the legal category "legal position of the ECtHR" contained in the final rulings of the Court. The legal position of the ECtHR should be understood as a rule of conduct developed by this court in the course of the evolutionary interpretation of the ECHR norms and applied by it in its subsequent practice, the binding degree of which is determined for each state by its body of constitutional justice.

3. The mechanism of influence of the legal positions of the ECtHR has been identified, which during the ECHR period in Russia was expressed in their implementation, carried out in the form of incorporation (through ratification of the ECHR and recognition of the jurisdiction of the ECtHR) and transformation (during the constitutional interpretation of the ECHR by the Constitutional Court of the Russian Federation). Based on all European practice, the legal positions of the ECtHR establish substantive guidelines for law enforcement officials and legislators of the ECHR member countries, modeling ways for qualitative reform of national legislation within the framework of conventional standards. Demonstrating, if necessary, a critical assessment of the national law, they successfully serve as a reason for its reform, if it does not contradict the existing system of national legal institutions and sociocultural values. In Russian civil law, this was manifested, in particular: in the consolidation of a new criterion of limited legal capacity of an individual, in improving the mechanism for protecting a bona fide purchaser, as well as in identifying for the purpose of subsequent correction: (1) gaps in legal regulation (state liability for damage caused by dangerous lawful actions; recognition of actual marital relations in the event of the objective impossibility of registering a marriage, etc.) and (2) norms that require updating due to the increasing complexity of social relations (strengthening the protection of information about the private life of a

citizen; expanding the freedom of non-commercial use of a work for personal purposes, etc.).

4. It is substantiated the need to consolidate the following legal mechanism, allowing to legalize actual marital relations of persons who are in them, but objectively do not have the opportunity to register a marriage, which deprives them of proper protection of their property and personal non-property rights:

- recognition of de facto marital relations should be limited in nature, covering only exceptional cases of unjustified abandonment without fair legal protection of persons who are or have been in such relationships, subject to the objective impossibility of registering a marriage;
- the fact that a man and a woman are in a marital relationship must be recognized in court by establishing circumstances confirming it: living together for at least three years at the time of going to court (if there is a joint child - at least a year) and maintaining a common household;
- when establishing the fact of being in a marital relationship, the court must determine the moment of its occurrence and verify compliance with the legal requirements for the validity of the marriage.

5. It is substantiated that in order to improve the mechanism for protecting the rights of subjects who have suffered harm from lawful, but dangerous for private individuals actions of public authorities to suppress someone's illegal activities, in law enforcement practice it is necessary, based on the primacy of human rights guaranteed by the Constitution of the Russian Federation, to be guided by the principle absolute responsibility of the state. As a result, the state's responsibility in the matter of the consequences of such harm should be expanded at the legislative level by fully compensating the victim for property damage in all cases of its infliction by lawful actions aimed at suppressing illegal activities, with the possibility of recourse to the person whose illegal activity was subject to suppression.

6. It is substantiated that the evolutionary interpretation is determined, first of all, by the need to protect the weak party in a civil legal relationship, as which the

ECtHR considers a person opposing the state, whose conventional law, due to various objective reasons, is outside the legal protection of the national legal order. Two ways are identified for the Court to implement the method of evolutive interpretation: changing its previous legal position and broad interpretation of conventional law. The first proved itself, in particular: in protecting the rights of shareholders, in determining the boundaries of the legal personality of a legal entity. The second is when protecting the rights to property, privacy, freedom of expression, etc. The court, resorting to the method of evolutive interpretation in the absence of a legal basis for this, actually exceeds its powers; therefore, it justifies this by the need to implement the goals of the Convention and does this in exceptional cases of critical discrepancy cases between the existing law enforcement and modern conditions.

7. It is substantiated that the legal positions of the ECtHR in the field of intellectual property, defining the boundaries of respect for four of the basic goods (property, privacy, freedom and security), can be used as the basis for the legal regulation of relations regarding new or unnamed objects of civil rights:

- a broad interpretation of the right to property protection makes it possible to cover every legitimate economic interest of the copyright holder that needs protection, which makes it possible to provide legal protection to any new or unnamed object in the law;
- the need to achieve a fair balance of conflicting interests in the implementation of the right to privacy and freedom of expression and access requires their mutual limitation, which in any case must meet three criteria: be based on the law, based on legitimate goals and be the minimum necessary;
- the right to security, being one of the main conditions for ensuring both private and public interests, has priority over the opposing subjective rights and freedoms, which also requires their limitation in accordance with the specified criteria.

8. The realization of the principle of personal autonomy implies the consolidation of a fair balance between competing values (privacy, access to information and freedom of speech). On this basis, it is justified that the protection

of a citizen's private life is not sufficiently ensured by Russian civil legislation, since the free collection, storage, dissemination and use of information about it, that previously became publicly available or disclosed by the citizen himself or at his will, is an unjustifiably excessive interference into his private life, if these actions are performed solely to satisfy ordinary interests or make profit. The balance can be established by limiting the provisions provided for in p. 1 of art. 152.2 of the Civil Code of the Russian Federation exceptions to the general rule - the collection, storage, dissemination and use of information about the private life of a citizen without his consent only in state, public or other public interests, as interpreted by the Constitutional Court of the Russian Federation, must be recognized as lawful.

The following changes to the current legislation are proposed:

1. state article 16.1 of the Civil Code of the Russian Federation in the following wording:

“Article 16.1. Compensation for damage caused by lawful actions of state bodies and local governments

In cases and in the manner prescribed by law, damage caused to the person or property of a citizen or the property of a legal entity by lawful actions of state bodies, local government bodies or officials of these bodies, as well as other persons to whom the state has delegated power, is subject to full compensation. ”

2. state the second paragraph of point 1 of article 152.2 of the Civil Code of the Russian Federation in the following wording: “It is not a violation of the rules established by the first paragraph of this point, the collection, storage, distribution and use of information about the private life of a citizen in state, public or other public interests, including cases where information about the private life of a citizen previously became publicly available or was disclosed by the citizen himself or at his will.”

3. state paragraph 3.1 of article 1081 of the Civil Code of the Russian Federation in the following wording: “3.1. The Russian Federation, a subject of the Russian Federation or a municipal entity in the event of compensation for damage on the grounds provided for in articles 16.1, 1069 and 1070 of this Code, as well as

according to decisions of the European Court of Human Rights, have the right of recourse to a person in connection with illegal actions (inaction) to whom the said compensation was made."

4. state the first paragraph of point 1 of article 1273 of the Civil Code of the Russian Federation in the following wording: "1. Reproduction by a citizen solely for personal purposes of a lawfully published work is permitted without the consent of the author or other copyright holder and without payment of remuneration, with the exception of: "

5. state article 1281 of the Civil Code of the Russian Federation in the following wording:

"Article 1281. Validity period of the exclusive right to a product

1. The exclusive right to a product is valid for the entire life of the author and fifty years, counting from January 1 of the year following the year of the author's death. The exclusive right to a product created in co-authorship is valid throughout the life of the author who survives the other co-authors, and fifty years, counting from January 1 of the year following the year of his death.

2. For a product published anonymously or under a pseudonym, the exclusive right expires after fifty years, counting from January 1 of the year following the year of its lawful publication. If, during the specified period, the author of a work published anonymously or under a pseudonym reveals his identity or his identity no longer leaves doubt, the exclusive right will be valid for the period established by paragraph 1 of this article.

3. The exclusive right to a product published after the death of the author is valid for fifty years after the publication of the work, counting from January 1 of the year following the year of its publication, given that the work was published within fifty years after the death of the author.

4. If the author of the product was repressed and posthumously rehabilitated, the validity period of the exclusive right is considered extended and fifty years are calculated from January 1 of the year following the year of rehabilitation of the author of the work.

5. If the author worked during the Great Patriotic War or participated in it, the validity period of the exclusive right established by this article is increased by four years.”

The theoretical significance of the study lies in the fact that the conclusions formulated complement and develop the sections available in the general theory of law, the theory of civil law, comparative law and other disciplines devoted to property and personal non-property human rights and their protection. The theoretical conclusions and recommendations based on them contained in this study are aimed at increasing the effectiveness of the implementation of the norms of the Constitution of the Russian Federation on human rights and fundamental freedoms in the protection of civil rights in domestic law enforcement practice.

Practical significance of the study. A comprehensive analysis of European standards for the protection of property and non-property rights of legal entities and individuals, and the practical recommendations formulated can be used to improve Russian civil legislation and practice based on it. Also, they can be used in the educational process in the disciplines: “Civil Law”, “Family Law”, “Housing Law”, “Property Law”, “Intellectual Property Law”.

Approbation of the study results. The dissertation was completed and discussed at the Department of Civil Law and Process of the Baikal State University. The results of the study were published as part of reports at 13 international, all-Russian and university scientific and practical conferences.

List of author's publications. The main provisions and conclusions of the study were tested in 19 works, 5 of which were in peer-reviewed scientific publications recommended by the Higher Attestation Commission under the Ministry of Education and Science of the Russian Federation.

Structure and scope of the study. The dissertation consists of an introduction, 4 chapters divided into 11 paragraphs, a conclusion and a bibliography including 338 titles.

 S. P. Iakovleva