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**APPLICATION AND IMPLEMENTATION OF INTERNATIONAL  
LEGAL NORMS IN RUSSIA**

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*Abstract*

The article deals with typical problems of relationship between international and national laws. The urgency of the problem is connected with complexity of formation of a new model of international relations. The article attempts to provide a theoretical understanding of the priority of norms of international law over national law and formulates emerging laws and problems of such priority. It offers a vision of this problem from the point of view of national and international law, which may differ. The authors propose maintaining the position for Russia, according to which the supremacy of the international law and adherence to its norms in relations between states is the main vector of the concept of international policy of our state.

Investigating problems of relationship between the international treaty and the Constitution of Russia, the authors analyze emerging points of view, investigate recent changes in the Russian doctrine regarding the compliance with their obligations under international law regarding constitutional provisions.

In conditions of formation of a new paradigm of international relations, the extreme importance of changes introduced in 2015 to the federal constitutional law “On the Constitutional Court of the Russian Federation” is emphasized. It justifies the need for fundamental research in the field of an emerging trend - fundamental resistance. The research is aimed at practical analysis and search for such legal regulators that would allow for the coordinated functioning of two legal systems (national and international).

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## **1. Introduction**

The main symbolic feature of modern stage of international interaction is the shift in the geopolitical landscape. A new paradigm of international relations is being born, the essence of which lies in the formation of a polycentric international system. Under these conditions, Russia is actively involved in resolving the acute threats facing the world community. This encourages “our partners” to restrain Russia's influence on the international processes. Including the implementation of the so-called sanctions by a number of Western states. These measures taken by a number of states in an individual (almost private) manner cannot be called terms from the existing international law - “international sanctions” (which signify completely different processes), as presented in the media and in some scientific literature. These processes are legally covered by the international law. It is not an ephemeral law, and is actually created by states by coordinating their will, it reveals the status of participants in the international communication, the rules of conduct, their rights and obligations. Such circumstances force to develop new understanding of mutual influence of the norms of national and international law.

## **2. Problem Statement**

Recently, an opinion about the “extinction of the international law” has become wide spread, statements about its inability to function are heard, and doubts about its necessity are expressed. However, in our opinion, all this is due to a lack of understanding of the evolution and ontology of the international law, as well as its essence and influence. The emergence and functioning of the international law is an objective process. As soon as a state appears, the right appears inside the country and, the rules of conduct appear outside, i.e. between the states themselves. Today, the problem of the correlation of the international and national law is becoming particularly relevant and, it moves from the category of scientific and theoretical discussions to the category of significant ones that need to be considered and require certain legal reasoning.

## **3. Research Questions**

The study of the problem includes theoretical substantiation of the relationship between international and national law. An analysis of relationship between international norms and the main sources of Russian law, and especially the Constitution of the Russian Federation, is given. The state of implementation of decisions of the international judicial institutions in Russia is discussed.

## **4. Purpose of the Study**

The purpose of this study is to discuss the basic component of the concept of jurisdiction, namely its limits, the possibility of ensuring the coordination of national and international regulators, which undoubtedly leads to the need to analyze the problems of the international law (contract) for our state, its relationship with the national, immediate prospects for their mutual influence.

## **5. Research Methods**

In this work, the following research methods were used:

- 1) Logical method

- 2) Comparative legal method
- 3) Formal and legal method
- 4) Structural and system method

## 6. Findings

### 6.1. Features of national legislation

The fundamental propositions of national legislation (constitutional provision) characterizing the position of the Russian Federation on this issue is the provision of Part 4 of Article 15 of the Constitution of the Russian Federation, which states the following: *Generally recognized principles and norms of the international law and international treaties of the Russian Federation are an integral part of its legal system. If an international treaty of the Russian Federation establishes other rules than those that are provided for by law, then the rules of an international treaty shall be applied.*

It is not a secret that recently the point on the defectiveness of Part 4 of Article 15 of the Constitution of the Russian Federation is being actively promoted and the opinions about its destructive role for Russia are multiplying. Noteworthy in this regard is the position of the Chairman of the Investigative Committee of the Russian Federation, Professor A. Bastrykin, who criticized the establishment of the provision of Part 4 of Article 15 of the Constitution of the Russian Federation. In particular, he proposed to exclude the principle of the priority of the international law over national legislation from the Russian legislation. No other examples of such discussions will be given as there are quite a lot of them in the media, as well as in the parliamentary (Tolstoy, 2018a) and academic environment (Khabrieva, 2016; Morozov, 2018; Panov, 2018; Baglaeva & Glazkova, 2017). There are several aspects of this problem that need thorough understanding.

The content of the constitutional formula (Part 4 of Article 15) which states that *generally recognized principles and norms of the international law and international treaties of the Russian Federation are an integral part of its legal system* can in no way mean the “unconditional priority” of these norms and treaties over national law. The point is that the principles, norms and treaties are an integral part of our legal system, along with all other norms, thereby stating that Russia is part of the world community of states.

The second sentence of the same constitutional norm stipulating that *if an international treaty of the Russian Federation establishes other rules than stipulated by law, then the rules of an international treaty shall be applied* and it reveals the cases of conflict between the international treaty of the Russian Federation and the law of Russia. In this case we are not talking about an absolute priority, but about the order of application of the rules, depending on their legal force and in the event of a conflict between one norm of the other. Such situation is typical of any branch of the law in any country; this is the rule of “norm priority”, however, not an abstract one, but a specific norm of the international treaty.

In accordance with the Federal Law of 15.07.1995 No.101-FZ “On the international treaties of the Russian Federation”, an international treaty of the Russian Federation means an international agreement concluded by the Russian Federation with a foreign state (or states), with an international organization or with another entity possessing the right to conclude international agreements in black and white and regulated by the international law, regardless of whether such an agreement is contained in one document or in

several related documents, as well as regardless of its particular name title. The process of assuming obligations is strictly regulated and contains a mechanism for protecting the state from defective contracts, in particular, the provisions on ways of expressing consent by the Russian Federation to an international treaty (including ratification) (Article 6), regulations on informing the Federal Assembly of the Russian Federation on the international treaties of the Russian Federation (including initiative information) (Article 7), functions of the Ministry of Justice of the Russian Federation in connection with the conclusion of the international treaties of the Russian Federation (about expertise) (Article 10), etc. In addition, it is established by the law at the constitutional level that the international treaties of the Russian Federation cannot be ratified if they contradict the Constitution of the Russian Federation.

One of the key institutions of the mechanism of protection against “defective contracts” is the institution of constitutional legal proceedings and, in particular, its highest body - the Constitutional Court of the Russian Federation. In accordance with the federal constitutional law “On the Constitutional Court of the Russian Federation”, in order to protect the foundations of the constitutional system, the fundamental rights and freedoms of man and citizen ensure the supremacy and direct effect of the Constitution of the Russian Federation throughout the territory of the Russian Federation, the Constitutional Court of the Russian Federation (besides other powers) permits cases on compliance of the Constitution of the Russian Federation with the international treaties of the Russian Federation that have not entered into force (Paragraphs “g”, Paragraph 1, Part 1, Article 3).

We believe that this *domestic mechanism of assuming international obligations*, expressing consent, and control mechanisms is sufficient and convincingly proves the point that it is practically impossible to incorporate international agreements into the legal system of the Russian Federation that do not meet its interests.

Thus, if to consider this constitutional provision as systemic unity with Part 1 of Article 15 of the Constitution of the Russian Federation, then it should be assumed that the international treaties of the Russian Federation take precedence over the laws of the Russian Federation; however, in case of conflict between the provisions of the Constitution of the Russian Federation and sources of the international law the priority is assigned to the constitutional provisions. This is the ratio of the analyzed regulators (international norms and national norms) in terms of the analysis of the norms of national law.

In this regard, one cannot but agree that “from the standpoint of the international law, such an understanding of the priority of the Constitution of the Russian Federation in relation to the sources of the international law has no basis”. The basic rule of the international law is the principle known since the ancient times of the international law, namely, “*pacta sunt servanda*” - the conscientious fulfillment of obligations. For the international law, the fulfillment of obligations by the state is important. How the state will fulfill its obligation is the business of the state itself, however, the obligation must be fulfilled.

Finally, if to assume that at some stage of a country's development an international treaty acquires qualities that do not meet Russia's interests, there are institutions of amendment, denunciation and withdrawal from an international treaty (Parts IV and V of the Vienna Convention on the Law of Treaties). These provisions correlate with the provisions of Section V of the Federal Law “On international treaties of the Russian Federation”.

These acts and the above protection mechanism are a legal way to overcome “undesirable treaties”. Thus, the point about the need for bringing changes to Part 4 of Article 15 of the Constitution of the Russian Federation is not based on the existing law, but is based on a false understanding of the principles of creation, functioning and termination of the norms of the international law. Otherwise, without changing the approach, it is unreasonably early and counterproductive to speak about the need to bringing changes to this norm at this stage.

Speaking about the removal from our legislation of these “figuratively speaking, sabotage of legal regulation” (i.e. Part 4, Article 15) and “strengthening the independence of the Russian Federation in the legal sphere ....” it should be noted that the statement is based neither on the historical, nor on the legal point of view on the essence of legal thinking in Russia. At the same time, we shall note that even if we assume a possible agreement with the need to correct Part 4 of Article 15 of the Constitution of the Russian Federation, it should be borne in mind that this provision is mentioned in Chapter 1 of “Fundamentals of the constitutional order”, which has special protection. So in accordance with Article 135 of the Constitution of the Russian Federation the provisions of Chapters 1, 2 and 9 of the Constitution of the Russian Federation cannot be revised by the Federal Assembly. This means the adoption of a new text of the Constitution of the Russian Federation, which raises a large number of questions and requires very fundamental preparation.

## **6.2. On the international law and the Constitution of the Russian Federation**

In setting forth the following point, it should be noted that the national law, as it is indicated in the Article 15, is not identical to the Constitution of the Russian Federation itself. The Constitution of the Russian Federation has a constitutive character, as well as the highest legal force regarding all the law in the country. In other words in the legal system of the Russian Federation, where the integral principles include generally accepted principles and norms of the international law, the Constitution of the Russian Federation has the highest legal force, direct effect and it is applied throughout the Russian Federation (Part 1 of Article 15 of the Constitution of the Russian Federation). Thus, another aspect of this problem is important, i.e. the relationship between the international treaty and the Constitution of the Russian Federation.

For the Russian doctrine of the international law, it is obvious that the priority of constitutional provisions over the international treaty follows from the entire structure of the country’s Constitution. Such situation is typical for the absolute majority of countries, with the exception of the Netherlands, Belgium and Luxembourg, whose constitutions provide for the priority of the norms of the international law over the national law and over the country’s constitution. In all other cases, to prove the priority of norms of the international law over the provisions of the country’s Constitution means to prove an axiom. There are no weighty reasons to assert that Russian national legislation is completely subordinated to the international law and that the international law has an absolute priority over the national legislation of the Russian Federation.

At the V St. Petersburg International Legal Forum, Valery Zorkin stated the following: Russia’s participation in the international agreements and conventions means only that Russia voluntarily imposes the obligations listed in these international documents. It reserves the sovereign right of final decisions in

accordance with the Constitution of the Russian Federation in the event of controversial issues or legal conflicts. The Head of the Constitutional Court of the Russian Federation has recognized that the Constitution, namely, its Article 15, states that international agreements are part of the legal system of Russia and if an international treaty provides for other norms than those enshrined in the national law, the norms of the international treaty are applied. However, due to the supremacy of the Constitution of the Russian Federation in the system of Russian legal acts “the international legal institutions should be interpreted as specifying the provisions of the Constitution” and “cannot be applied if they go beyond the legal meaning laid down in the Constitution” (Zorkin, 2015).

At the same time, this strictly “national (domestic) view” on the relationship between the international treaty and the country’s constitution, will not have such an obvious understanding when viewed from the existing international law, in particular, the provisions of the 1969 Vienna Convention on the Law of International Treaties, which is the main international act on the definition, status, conditions of conclusion, validity and termination of the international treaties. Thus, the Article 27 (Domestic Law and Compliance with Contracts) stipulates that “a member may not refer to the provisions of its internal law as an excuse for his/her failure to comply with a contract. This rule is applied without any consideration to Article 46” (Bekyashev & Khodakov, 1996).

According to Article 46 (Provisions of the domestic law relating to the competence of making agreements): 1. The state is not entitled to rely on the fact that its consent to be bound to a contract for it was expressed in the violation of one or another provision of its internal law relating to the competence of making contracts as a basis for invalidity of its consent, unless the violation was clear and did not concern norms of its internal law of particular importance. 2. The violation is apparent if it is objectively obvious to any state acting on this matter in good faith and in accordance with the usual practice” (Bekyashev & Khodakov, 1996).

In our opinion, a rational interpretation of these international legal norms leads us to the only possible understanding, namely that the general international law does not give any grounds for participants (states) to refer to their Constitution (or any other act of national law) for non-compliance with the obligations under the international law.

Thus, in the “current” interpretation, from the point of view of the national state, the question of the relationship between the international law and the constitution is solved according to the principle of ad hoc. In this case, it can be stated, that there is a discrepancy in the interpretation of this ratio from the point of view of the international law and its institutional mechanisms and, from the point of view of the national law of the state.

### **6.3. On the decisions of international judicial institutions and national legislation**

With the adoption of the Federal Law No. 7-FKZ of 14 December 2015 “On Amendments to the Federal Constitutional Law On the Constitutional Court of the Russian Federation” the *Constitutional Court of the Russian Federation* is defined as the body charged with the *right to decide on protection of human rights and freedoms in the interpretation allegedly leading to their discrepancy with the Constitution of the Russian Federation*. The role and significance of this law is yet to be investigated, and its implications

for the problems of the theory of “state sovereignty” are extremely important. In our opinion, there exist some evidence of a transition to different paradigm of international relations.

The adoption of this Federal Constitutional Law was preceded by the adoption of Decree No. 21-P of 14 July 2015 by the Constitutional Court of the Russian Federation on the verification of constitutionality of legislation governing the operation of the international treaties and obligations under the European Convention on Human Rights in Russia. In this Decree, the Constitutional Court of the Russian Federation expressed the position according to which in our country the need for a comprehensive assessment of the legislatively established mechanism for the implementation of ECHR decisions was designated. At the same time, the focus of such verification relates to the problem of legislative regulation of the fulfillment of obligations under the Convention, to the extent that it can actually oblige the state and its authorities to ensure unconditional execution of ECHR judgments even in cases of divergence (conflict) of the latter with the norms of the Constitution of the Russian Federation. In its Decree, the Constitutional Court of the Russian Federation indicated that the unconditional implementation of decisions of an intergovernmental body, adopted on the basis of such international treaty, in an interpretation that is inconsistent with the Constitution of the Russian Federation, could entail a violation of its provisions. It formulated the conclusions on possible scenarios for resolving the conflicts in question and ensuring harmonization of national and international regulators when the latter diverge from the legal provisions of constitutional significance. At the same time, the Constitutional Court of the Russian Federation *allowed the possibility of departure from the unconditional binding rulings made against Russia by the ECHR* while ensuring the priority of constitutional principles and norms in the event of such conflicts, pointing out the exceptional order of such developments (when such a departure is the only possible way to avoid violation of principles and norms of the Constitution). The Decree outlines the substantive criteria for correlation and coordination of diverging regulators. And finally, in accordance with the requirements for the federal legislator, the Constitutional Court of the Russian Federation justified the importance of legislatively introducing special powers of the Constitutional Court of the Russian Federation to assess the possibility of executing decisions of the ECHR in conflict (in terms of constitutional provisions) situations. As a possible legal consequence of a ruling by the Constitutional Court of the Russian Federation on the impossibility of executing a decision of an intergovernmental body, nonacceptance of actions (acts) aimed at the execution of this decision was defined (Decree of 12.04.2016 No.12-P; Decree of 01.01.2017 No.1-P ).

It should be noted that in this approach to ensuring the harmonization of national and international legal regulators Russia is not alone. This is an established trend of the beginning of XXI century. So, V.L. Tolstykh points out that “in the past few years, the highest courts of the Council of Europe member states have repeatedly refused to execute the decisions of the ECHR referring to the priority of domestic law or other obstacles existing at the level of the internal order”. Moreover, that “this phenomenon is called *fundamental resistance*”, which “includes several key ideas, among which is the mediation of law by politics, balance of autonomy and order and expansion of the range of argumentation possibilities. It considers human rights in the framework of a context, that is, in relation to the environment in which they are discussed and act. It follows that human rights are not a single institution, but two (and more) institutions, fixed in different orders. In this regard, the phenomenon of “principle resistance” reflects not only the conflict of positions, but also the incompatibility of coordinate systems within which these positions were formed.

Such incompatibility does not mean the impossibility of the harmony of court decisions, which is achieved when the trends of autonomy and order are in balance” (Tolstoy, 2018b).

Thus, the so-called “principle resistance” performs a “useful function” for the national order, but undermines the established balance between the orders (international and national), as well as places in question the universality of human rights.

Obviously, this trend is already well known to foreign science and today we should talk about emerging approaches to the harmonization of national and international legal regulators. In the domestic legal doctrine, currently there are no fundamental scientific studies of the designated trend, although some ideas about it do exist (Kartashkin, 2015).

In our opinion, finding such a balance can occur only through a transition to fundamentally different legal paradigm.

Attention should also be paid to such an aspect of the problem as the methods of applying the practice of the ECHR in our country in the absence of the system of *official publication* (official translation) of its decisions.

By ratifying the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto, the Russian Federation recognized the jurisdiction of the European Court of Human Rights as binding. According to Article 46 of the Convention “High Contracting Parties undertake to execute final judgments of the Court in those cases where they act as parties”. Given their precedent-setting, the decisions of the European Court have, in fact, the normative force generally recognized in the states. Moreover, they have the character of a precedent. Therefore, it is obvious that the application of the practice of the European Court of Justice in the Russian Federation (imposed on Russia) is **impossible without its official publication**, as follows from Article 15 (part three) of the Constitution of the Russian Federation, which obliges the state to officially publish any regulatory legal acts affecting the rights, freedoms and duties of man and citizen.

The need to establish an appropriate system of official translation and publication of the decisions of the European Court (and other judicial institutions) has been discussed for more than a decade and a half. The last draft law “On the procedure for publishing the decisions of the European Court of Human Rights in the Russian Federation” was considered in 2002.

It should be assumed that this very situation may serve as a basis for non-application of certain legal positions of the ECHR in Russia. Apparently, in order to ensure such uniform application by the courts of general jurisdiction of the Convention ratified by the Russian Federation to the Protocols thereto, the Plenum of the Supreme Court of the Russian Federation adopted the Decree No.21 of 27 June 2013 “On the application by courts of general jurisdiction of the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols of 4 November 1950”, where the courts provided relevant explanations. In particular, Paragraph 2 of the Plenum stipulated the following: “As follows from the provisions of Article 46 of the Convention, Article 1 of the Federal Law of 30 March, 1998 No.54-FZ “On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols” (hereinafter - the Federal Law on Ratification), the legal positions of the European Court of Human Rights (hereinafter - the European Court, the Court), which are contained in the final judgments of the Court, adopted in respect of the Russian Federation are obligatory for the courts. In order to effectively protect

human rights and freedoms, the courts take into account the legal positions of the European Court set forth in the final rulings adopted in relation to other state parties of the Convention. At the same time, the legal position is taken into account by the court if the circumstances of the case under consideration are similar to the circumstances that have become the subject of analysis and conclusions of the European Court”.

Since 1959, the European Court has delivered several thousand decisions, the prompt publication of which in its full version in the Russian Federation is now impossible. At the same time, the decisions made in connection with the claims about violation by the Russian Federation of its obligations under the Convention acquire priority significance for it. These decisions should be officially translated into Russian and communicated to the relevant authorities.

At the same time, under the existing law of Russia, there is a term and status of **“unofficial translation” of decisions of the ECHR**. Thus, by virtue of Paragraph 4 of Regulations on the Representative of the Russian Federation at the European Court of Human Rights - Deputy Minister of Justice of the Russian Federation, approved by the Decree of the President of the Russian Federation of 29 March 1998 No.310, the Representative of the Russian Federation at the European Court of Human Rights - Deputy Minister of Justice of the Russian Federation ensures the interaction of federal bodies of state power, the bodies of state power of the constituent entities of the Russian Federation and local self-government court rulings. In order to implement this interaction (Khabireva, 2007), the ombudsman sends to the interested departments, including the Supreme Court of the Russian Federation, and regional and equivalent courts, texts of unofficial translations of European Court rulings. However, such provision of an “unofficial translation” into Russian of ruling by the ECHR on the issue that Russia violated the Convention and (or) its Protocols is made at the request of the person who applied for revision of the judicial act due to newly discovered circumstances, or at his/her request (CPC, 2002; CAP, 2015; APC, 2002) in the preparation of such a process. Moreover, the access to such documents is very limited.

The Supreme Court of the Russian Federation presented explanations on a number of challenges of the proceedings in a 194-page review of judicial practice published on 17 February 2017. However, it also deals only with the rules for the application of the ECHR rulings made in relation to Russia when revising a judicial act that has entered into legal force, which in no way overrides the point that all legal positions of the ECHR should be known about and should be applicable in the courts of our country.

We believe that the adoption of the relevant Federal Law, which would provide for the mandatory official publication of the decisions where the Russian Federation is a party. However, taking into account the instructions of the Plenum, all other ECHR Decisions are subject to translation and publication. Since the rules of Regulations of the European Court of Justice (Rule 57 of Regulations A and Rule 59 of Regulations B) allow a party to request an interpretation of a court decision, it should also provide for the publication of relevant interpretations directly related to the decisions of the Court.

## 7. Conclusion

At the present stage of development of legal relations it is impossible to state the fact of an absolute supremacy of the international regulatory acts over the national ones, since “the degree (level) of supremacy is established by the states themselves in the process of creating mandatory principles and norms of the

international law” (Kartashkin, 2015). The state of sovereignty remains the basis of the constitutional order of most states. In this regard, the very concept of state sovereignty is subject to a certain rethinking.

In the current conditions, Russia can and should decide on the applicability of decisions of foreign courts, taking into account the priority of the idea of the need to protect its state sovereignty, however, this must be done prudently, while simultaneously proposing the necessary initiatives to harmonize mutual influence of national and international legal regulators. In this regard, the view stating that “the territorial restrictions are inevitable, and they will remain as long as the powers of the courts depend on the authority of the national state” is notable (Rutherglen & Stern, 2014.).

The practice of the European Court of Human Rights regarding the complaints of Russians shows that the violations of rights and freedoms enshrined in the ECHR most often occurs not because of the imperfection of the Russian legislation, but because of inappropriate interpretation and application of Russian laws. In order to increase the effectiveness of the execution of the European Court decisions and the implementation of the norms of the European Convention, Russian state authorities should take measures to create a *system of official publication of those decisions of the ECHR that are issued on complaints against Russia, and legal positions of the European Court final decisions that are taken in relation to other States Parties to the Convention*. What is required are amendments to the Federal Law “On procedure for the publication and entry into force of federal constitutional laws, federal laws, acts of the Chambers of the Federal Assembly, providing for the sixth section in the “Legislative Assembly of the Law of the Russian Federation” to publish resolutions of Russian Federation. Or on the adoption of an independent Federal Law “On the procedure for publishing the decisions of the European Court of Human Rights in the Russian Federation”.

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