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AMENDMENTS TO RUSSIAN CONSTITUTION AND INTERNATIONAL INSTITUTIONS DECISIONS: EAEU PROSPECTIVE

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Abstract. The constitutional reforms in Russia are amongst the most significant news for Russia's partners in international relations. The configuration of international law and Russian domestic legal order falls within the scope of the constitutional changes of 2020, and there is no chance that this change will be abandoned by the legislator. This particular amendment was not actively commented on during the nationwide discussion on the constitutional reform; it drew mostly experts' attention. The article alleges that the constitutional amendment restricting the applicability of international case law in Russia is both a transient response to the instant political tension around Russia, and a formalization of the positivistic trend well established in domestic judicial practice. The positivistic trend is part of the process shaping Russia's own approach to international law. The prospective amendment concerning international case law in the Constitution of the Russian Federation will not hinder the rules expressly stated in the treaties of the EAEU. However, the resolutions of the EAEU's structures and institutions, including the case law of the Court of the EAEU, are likely to be scrutinized in a defensive way by Russian Constitutional court in situations extraordinary for the Russian State, ensuring their conformity with the unquestionable and unconditional supremacy of the Russian Constitution.

Keywords: EAEU, international law, international case law, constitutionalism, constitution of Russia, Eurasian integration.

INTRODUCTION

The relationship between international and domestic law is a political point, being one of the important points that traditionally should be reflected in the Constitution. In January 2020, constitutional amendments were announced in Russia, some of which were related to the role of the international law in the domestic legal order of Russia. The text of the amendments to the Russian Constitution was quite rapidly submitted and approved by the Federal Assembly, the President, and the Constitutional Court. Simultaneously, the process of nationwide discussion was launched, and the proposals from society were collected by the Working Group. On

July 1, the constitutional amendments were supported by a national vote. Some of the amendments are related to the role of international law in the domestic legal order.

Thus, there is a sound basis for academic discussion on certain crucial features of the text, which is important for Russia's partners in international relations, especially for EAEU member states.

Among other changes, there is an important amendment concerned with the role of international law for the Russian domestic legal order. This should be thoroughly examined, as this aspect of the current constitutional reform is important not only domestically but also for the international community.

In the current political context, Russia is facing a number of international political challenges: the Crimea conflict, pressure from and about Syria, the MH17 flight trial, and others. In such extraordinary circumstances for the Russian Federation, the state needs to defend and legitimize its position. The new approach to the international rule of law in Russia should be placed in this context. Historical reasoning will enlighten certain answers and justifications behind the Russian constitutional changes. The reconstruction technique help to reveal the links, and the political and social foundations, associated with the whole process of amending the constitution. The immediate causes rooted in legal texts have been leading to much broader findings and more general conclusions once they have been perceived in an integrated manner. The text of the amendments to Russian Constitution shall be examined in this article, and the method of the academic foresight shall be applied to assess these constitutional changes.

THE BACKGROUND OF THE CURRENT CONSTITUTIONAL AMENDMENTS

First of all, Russia currently expresses its own view on international law, which to a large extent is in line with long-standing traditions dating back to Soviet times. In the 1990s, Russia quite visibly broke with its Soviet past; however, the influence of the strong and well-established school of Soviet international law still persists.

There is a trend towards globalization in international law and justification of common interests. At the same time, it is also true that different countries and regions are developing their own approaches towards international law; for instance, China has long been promoting its own approach to international legal rules and regulations [Hanqin 2011; Chimni 2006]. Thus, it is logical that Russia, pursuing its own interests in this complex political reality, would sooner or later elaborate its own consistent approach in this field.

The Soviet approach to international law used to be a subject of thorough study worldwide. Contrarily, in the 1990s, the international scientific community seemed to lose interest in Russian law, mostly due to the chaotic situation and the absence of any consistent approach to international law in Russia.

As Malksoo points out, before 2014 there were no meaningful studies devoted to Russia on the international level. Only after 2014 did the growing importance of Russia in international affairs call for some extensive research, merely trying to identify the contemporary legal schools of international law [Malksoo 2015]. After 2014, quite a few journal articles were published, claiming that Russia is shaping a different form of international law in its own neighborhood. Due to this lack of academic studies into Russia's internal processes, it comes now as a surprise, and looks like a novelty, that Russia is forming its own approach to international law.

International law, and especially the part related to human rights, presents a whole diversity of instruments, from formal to quite illusive. On the one side of the spectrum there are formal treaties, and on the other side there are pledges, political

arrangements, and the most elusive entity – customary international law. The Soviet Union was rather adherent to formal sources; this is illustrated in comparative research by the fact that it was more frequent a party to the most of the UN-sponsored treaties than such countries as the United States, which participated only in few of those treaties [Damrosch, 1991].

The Soviet Union consistently followed positivist legal theories, relying mostly on those treaty obligations with all formalities. Legal positivism emphasizes the conventional nature of law, and does not imply an ethical justification for the content of the law. The amendments to the Russian Constitution reveal the same – the endorsement for the formal sources of international law [Shashkova, Verlaine, Kudryashova, 2020]. As will be shown below, only the application of international case law is clearly limited by the amendments.

The foundation of the current constitutional reform, in its part concerning international law, was laid by the divergence of views between the European Court of Human Rights and the Constitutional Court of Russia, followed by discussions on the legitimacy of the international institutions' decisions in the Russian domestic legal order.

One such example was the gap in the positions of the Constitutional Court of the Russian Federation and the European Court of Human Rights with respect to the understanding of Article 6(1) of the Convention stating the right for a fair trial [Koroteev, Golubok 2007]. Later in 2013, there was a rather tense case, "*Anchugov and Gladkov v. Russia*", related to voting rights in detention. Afterwards came the case which was, and may be, still the most highly-strung: the case of Yukos. On January 19, 2017, the Constitutional Court looked at the decision of the European Court of Human Rights, dated July 31, 2014, applied arguments provided by the Ministry of Justice of the Russian Federation to it, and used these opinions to judge this European decision impossible to implement. The Constitutional Court stated that "the execution of the decision of the interstate body for the protection of human rights and freedoms is impossible, because it is based on the provisions of the international treaty of the Russian Federation as interpreted, leading to their discrepancy with the Constitution" (Article 104.2 of the Federal Law on the Constitutional Court of the Russian Federation), also noting the mechanism for interpreting the provisions of the Constitution "in order to eliminate uncertainties in their understanding, taking into account the revealed contradiction between the provisions of the international treaty of the Russian Federation as interpreted by the interstate for the Protection of Human Rights and Freedoms, and the provisions of the Constitution with regard to the possibility of execution of the respective intergovernmental body" (Article 105). The Constitutional Court stated that the payment by the European Court of Human Rights to the former shareholders of Yukos is contrary to the constitutional principles of equality and justice in tax law relations, because Yukos Petroleum had built illegal tax evasion schemes and the budget system of the Russian Federation did not regularly receive from it in due form the huge amounts of tax payments necessary for making public obligations to all citizens, overcoming the financial and economic crisis. Thus, the Constitutional Court considered it impossible to pay to the heirs and assignees of such company any significant monetary compensation from the Russian budget.

Yukos shareholders appealed to the European Court of Human Rights, and received a decision in their favor in September 2011 (OAO Neftyanaya Kompaniya Yukos v. Russia, claim No. 14902/04). The resolution was given, but not the sum. The sum was given by the European Court of Human Rights in July 2014, and the Russian Federation took immediate actions.

The European Court obliged Russia to pay Yukos shareholders and the company's successors the quite significant sum of €1,866,104,634. It was one of the tensest cases, in which the European Court of Human Rights showed an "excessively innovative" approach to its interpretation of international law [Entin, Entina 2017].

Thus, introduction of a new Chapter 13.1 to the Federal Law "On the Constitutional Court of the Russian Federation" seems like a post-defense syndrome for the Russian budget.

Article 104.1 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation" provides that the "federal executive body" may appeal to the Constitutional Court of the Russian Federation with a request on the possibility of enforcing the decision of the interstate body for the protection of human and civil rights and freedoms "on the basis of the conclusion of the federal state bodies that are entrusted with the duty of within its competence, take measures to implement decisions of the interstate body for the protection of human rights and freedoms". The Constitutional Court shall then conduct judgement and make one of the following decisions:

– on the possibility of the execution (in whole or in part), in accordance with the Russian Constitution, of the decision of the interstate body for the protection of human rights and freedoms, adopted on the basis of the provisions of the international treaty of the Russian Federation, as interpreted by the interstate body for the protection of human rights and freedoms, in connection with which a request was submitted to the Constitutional Court of the Russian Federation, or

– on the impossibility of implementing (in whole or in part), in accordance with the Russian Constitution, the decision of the interstate body for the protection of human rights and freedoms, adopted on the basis of the provisions of the international treaty of the Russian Federation, as interpreted by the interstate body for the protection of human rights and freedoms, in connection with which a request was submitted to the Constitutional Court of the Russian Federation.

In the latter case, the decision of the interstate body for the protection of human rights and freedoms shall not be implemented and carried out in the Russian Federation.

Based on exactly such powers, the Constitutional Court interpreted the decision of the European Court of Human Rights on the case "*Anchugov and Gladkov v. Russia*" as impossible to implement. The Russian Constitutional Court stressed the necessity of ensuring a reasonable balance between the obligation to implement the judgments of the European Court of Human Rights and of respect for the fundamental principles of the Russian Federation's constitutional system. The Constitutional Court found that, because the judgment of the European Court of Human Rights in question implicitly conflicted with provisions of the Russian Constitution, Russian courts are not obliged to comply with judgment regarding issues that remain in conflict; however, other means are available to the Russian legislature to give effect to the judgment [Abashidze, Ilyashevich, Solntsev 2017].

The European Court of Human Rights, however, with regards to the instruments it has to enforce its judgement, only actually has political instruments at its disposal. Of course, there is the European Convention on Human Rights, Article 46 of which regulates the binding force of the decisions of the European Court of Human Rights. Article 41 of the Convention applies the principle of just satisfaction: if the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.

This case further attracted the attention of the Committee of Ministers of the Council of Europe, and it ruled twice in 2017. The result was still the same: the decision was not executed yet. And it was not executed on legal grounds from point of view of the Russian Federation. However, in September 2019, the Committee of Ministers of the Council of Europe – which, pursuant to Article 46(2) of the European Convention on Human Rights, supervises the execution of judgments of the European Court of Human Rights – adopted a final resolution which closed the supervision of the case "Anchugov and Gladkov v. Russia". The closure of the case means that Russia has complied with Anchugov and Gladkov judgment, and the measures adopted by the Russian authorities are thought to be an adequate response to the judgment, as per assessment of the Committee of Ministers of the Council of Europe[1].

The interpretation of Article 15 of the Constitution leads to the conclusion that international law, under the Constitution of the Russian Federation, relies upon federal laws and not on federal constitutional laws. The Constitutional Court of the Russian Federation conducts its activity based on the Federal Constitutional Law "On the Constitutional Court of the Russian Federation". Therefore, the resolution of the Russian Constitutional Court shall prevail to the duly ratified international law.

In 2020, however, the situation is perhaps not quite the same with regards to the non-execution of a number of decisions taken by the European Court of Human Rights. Two more decisions by international bodies against the Russian Federation were taken this year. The first one was the decision of the European Court of Human Rights, dated January 14, 2020, which states that the main participants of the Yukos case – Khodorkovsky and Lebedev – were convicted for actions conducted which were not a crime. The decision provided that, with respect to Khodorkovsky and Lebedev, Articles 6 (right to a fair trial), 7 (no punishment without law), and 8 (right to respect for private and family life) of the European Convention on Human Rights were violated. At the same time, the European Court of Human Rights did not recognize the process against businessmen as politically motivated.

The development of the doctrine on the issue of the significance of international case law in Russia can be traced back to 2007. This year saw the appearance of the sovereign democracy concept, formulated by the Chair of the Constitutional Court of Russian Federation Valeri Zorkin[2], laying the academic grounds for the Russian Constitution and the Constitutional Court's decisions having supremacy over the positions of the international courts.

The legal basis for the Constitutional Court's line of decision-taking could be found in the Article 125 p.6 of the Constitution concerning the powers of the Constitutional Court of the Russian Federation. It states that international treaties and agreements not corresponding to the Constitution of the Russian Federation shall not be enforced and applied.

In 2015, there were further developments of the Federal Law "On the Constitutional Court of Russian Federation", which was supplemented with a special provision 3.2[3]. Since then, it has become clear that the Constitutional Court is able to review the

[1] *H46-17 Anchugov and Gladkov Group v. Russian Federation (Application No. 11157/04)*. URL: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680972e12 (accessed 22.05.2020).

[2] *The Statement of President of the Constitutional Court of the Russian Federation V.D. Zorkin, 'National Interests, Contemporary World Order and Constitutional Legality' at the Scientific Conference 'Role of Law in Securing National Interests'*. 2005. URL: http://www.ksrf.ru/news/7.htm (accessed 22.05.2020).

[3] *Federal Constitutional Law, dated 14.12.2015, No.7-FKZ.*

decisions of interstate institutions protecting human rights and to decide whether there is a possibility of enforcing such decisions. This review can be initiated on the request of Russian authorities entitled to defend the interests of Russia in the international institution once a claim to the Russian Federation is submitted therein. Thus, the amendments to the Federal Law "On the Constitutional Court of Russian Federation" allowed the Court to find the decisions of international institutions non-enforceable. This provision of the law was criticized in publications, as the Constitutional Court of Russia enjoys unlimited power to reject the decisions of international judicial bodies and therefore justify the non-fulfillment of international obligations [Chernichenko 2018].

It would be a mistake to think that Russia – and in particular its judicial bodies – are specifically ignoring the positions of the European Court of Human Rights. The Supreme Court of the Russian Federation has issued official guidelines for Russian courts of general jurisdiction on how to apply the Convention on Human Rights in its judicial procedure[4]. The Supreme Court recommended taking into account the decisions of the European Court of Human Rights once the facts and merits of the case are identical to those considered by the European Court of Human Rights.

These controversies and disagreements have long been quite acute; this situation involves dealing with the coherent position of the Constitutional Court of Russia, which is already justified on academic grounds and supported by legislative changes. In recent publications, it has been argued that both the international judicial bodies and the national courts have to cede some of their views, moving to collective meaning-making [Orlova 2018].

The practice of the highest courts of the Russian Federation – the Supreme Court and the Constitutional Court – in implementing decisions of the European Court of Human Rights shows that the majority of the decisions are duly executed, unless the political situation or extraordinary circumstances claim the opposite.

THE CONSTITUTIONAL AMENDMENTS 2020 RELATED TO THE INTERNATIONAL LAW

In his Address to the Federal Assembly, President Putin urged to change the Russian Constitution in order to guarantee its priority. He further explained what it means, and literally that "the international legislation and treaties requirements, as well as the decisions taken by international bodies, can have effect within the territory of Russia, to the extent that they do not entail restrains of human and civil rights (freedoms) and do not contravene the Constitution of Russia"[5].

This Address to the Federal Assembly was followed by the draft of the Federal Constitutional Law "On the Amendment to the Constitution" introduced to the Federal Assembly. Among the whole bunch of the new provisions, there was a revised form of Article 79, with new approaches towards international law. This text was supported by the national voting in July 2020.

Previously, Article 79 contained a short statement: "the Russian Federation may participate in interstate associations and transfer part of its powers to them according to international treaties and agreements, if this does not involve the limitation of the rights and freedoms of man and citizen and does not contradict the principles of the constitutional system of the Russian Federation".

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[4] *The Resolution the Supreme Court of the Russian Federation (Plenum) of 27 June 2013 No. 21 "About the Applying by the Courts of General Jurisdiction of Russia the Convention on Human Rights and Main Freedoms (4 November 1950 and the Protocols thereof").*

[5] *President's Address to the Federal Assembly*. URL: http://www.kremlin.ru/events/president/news/62582 (accessed 20.03.2020).

The revised Article 79 has a broader wording. The new text adds that the decisions of interstate bodies, adopted based on the provisions of international treaties concluded by the Russian Federation and interpreted in a way that contradicts the Constitution, shall not be enforced in Russia.

Article 79 is included in Chapter 3 "Federal Structure" of the Russian Constitution. The provisions of Chapter 3 are not subject to special constitutional procedures. The clauses of Chapters 3-8 of the Russian Constitution can be amended according to the rules fixed for adoption of federal constitutional laws, and these come into force after they are approved by the legislative assemblies of not less than two thirds of the subjects of federation. Therefore, Article 79 is categorized as "ordinary" provision of the Russian Constitution.

Another constitutional provision concerning international law – Part 4 Article 15 – has been left intact, and still ensures that the universally recognized norms of international law and international treaties and agreements of the Russian Federation shall be a component part of its legal system. If an international treaty or agreement of the Russian Federation establishes other rules than those envisaged by law, the rules of the international agreement shall be applied. This provision forms Chapter 1 "The Fundamentals of the Constitutional System" and any amendments to this chapter are subject to cumbersome procedures.

In Article 15 (4), it is possible to see the tradition of endorsement of formal sources of international law. The Supreme Court of the Russian Federation gave its official guideline for its courts in 1995[6], stressing the positivistic meaning of the article. Only those officially published international treaties that do not require the internal acts should be applicable directly. In 2003, the Supreme Court[7] clarified that once the international treaty sets a rule other than the internal legislation, the court should apply only those international treaty rules which have a direct and immediate effect in Russian legal system.

Thus, the Supreme Court continued the positivist line, and narrowed the range of international law sources applicable in Russia, leaving only the international treaties and only those treaties which do not require any further legislative implementations applicable straightforward and immediately.

Therefore, the amendment of Article 79 rather reaffirmed the approach already well-established in Russian practice and academic science. The novelty is, of course, its aim to resolve the controversial situation with the decisions of the European Court of Human Rights. However, the wording "decisions of interstate bodies adopted based on the provisions of international treaties" is wider and encompasses many other decisions. At the same time the wording is limited by the notion of enforceability (its Russian equivalent "ispolnenie").

The decisions of courts or quasi-courts can be enforced. The decisions of some executive bodies of international or interstate organizations are less likely to require enforcement. Undoubtedly, a certain ambiguity could be foreseen here. In the current version, the amendments dealing with the case law of any kind form the international law realm.

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[6] *The Resolution the Supreme Court of the Russian Federation (Plenum, dated 31 October 1995, No. 8 "About Some Questions of Applying the Constitution of Russia by the Courts in the Course of Justice".*

[7] *The Resolution of the Supreme Court of Russian Federation (Plenum), dated 10 October 2003, No. 5 "About the Applying by Courts the Generally Recognized Principles and Norms of International Law and International Treaties of the Russian Federation".*

THE CONSTITUTIONAL AMENDMENTS IN RUSSIA AND THE LAW OF THE EAEU

The current amendments of the Russian Constitution are of great interest for Russia's partners in international associations and unions, in particular in the Eurasian Economic Union.

President Putin presented the Eurasian Economic Integration Project as the most important historic milestone not only for the EEU's member states but for the whole post-Soviet space. The Eurasian integration was supposed to make the leap to a whole new level of integration compared with all previous attempts. Special attention was paid to the effectiveness of the decision-making process on the supranational level, setting "the rules of the game" for all the interested parties. The Eurasian integration project was initially expected to present its member states with leadership in global growth and civilizational progress[8].

Eurasian integration had been developed for decades, and quite a few concepts and formal agreements had already been elaborated by the time the Eurasian Economic Union came to the existence. The Treaty establishing the Eurasian Economic Union (Astana, May 29, 2014) is quite extensive, containing 118 articles and a bulk of protocols. Many aspects of interaction and cooperation between member states have their legal basis in this treaty. A certain legal framework, which is usually left for agreements in further international documents, has been solved by the Treaty on the Eurasian Economic Union, such as the macroeconomic coordination [Shokhin, Kudryashova 2019]. Therefore, the current amendments in the Russian Constitution concerning international case law shall hardly have any dramatic impact on the engagement of Russia in the EAEU.

Still, there are a few decision-taking bodies within EAEU supranational structures. Part 1 Article 6 of the Treaty on the EAEU "The Law of the EAEU" makes clear what is included in EAEU law: the Treaty on the EAEU; international agreements within the EAEU; international agreements between the EAEU and a third party; decisions and resolutions by the Supreme Eurasian Economic Council, the Eurasian Intergovernmental Council, and the Eurasian Economic Commission that were accepted according to their authority provided under the present Treaty as well as international agreements within the EAEU. Resolutions of the Supreme Eurasian Economic Council and the Eurasian Intergovernmental Council shall be performed by the member states in accordance with their national legislation.

There has already been a position expressed on the direct effect of the Treaty on the EAEU in the domestic legal orders of the member states; this position has already been confirmed by the Court of the EAEU case law. However, even before the draft of the current amendments to the Russian Constitution was published, concerns were expressed that there may be conflicts related to the unswerving constitutional supremacy over decisions of these international bodies [Kalinichenko, Petrov, Karliuk 2019]. Those concerns have sound basis, as the Constitutional Court of Russia has already showed its willingness to review the decisions of the Commission of EAEU. Considering the court request on the application of the Eurasian Commission resolution № 728[9], the Constitutional Court of Russia took the view that participation of Russia in the Customs Union does not constitute any ground for a derogation from

[8] Putin V. (2011) A New Integration Project for Eurasia Is the Future That Is Being Born Today. – *Izvestia*. 03.10.2011. URL: https://iz.ru/news/502761?page=2 (accessed 16.07.2020).

[9] *The Ruling of Constitutional Court of Russia of 3 March 2015 No. 417-O.*

the supremacy of the rules of Russian Constitution. Russia is by no means relieved of fulfilling its constitutional duty to recognize, respect, and protect human rights, and this duty must determine the meaning, content, and application of laws.

The EAEU also created a judicial body – the Court of the Eurasian Economic Union (further Court of EAEU). Annex II to the Treaty represents the Statute of the Court of Eurasian Economic Union. It is established, and acts on a permanent basis in accordance with the Treaty on the Eurasian Economic Union and the Statute. The Statute announces that the purpose of the Court is to ensure a uniform application of the Treaty, international treaties within the EAEU, international treaties between the EAEU and a third party, and decisions of the EAEU's bodies by the member states and bodies of the EAEU, in accordance with the provisions of this Statute. Paragraph 39 of the Statute sets that the Court shall adjudicate disputes on any issues of the implementation of the Treaty, international treaties within the EAEU, and/or decisions of the EAEU's bodies.

According to the Statute (paragraph 102), the general rule is that the disputing parties shall independently determine the form and manner of enforcing the Court decision.

Trying to make an educated guess about prospective decisions taken by the Court of the EAEU, given the new reality in Russian after the Constitution's amendments, means dealing with a very complicated issue.

The Court of the EAEU is not a successor of the Court of the Eurasian Economic Community (the Court of the EurAsEC); the Court of the EAEU may distance itself from the previous case law of the Court of the EurAsEC. This can be seen in the case "*General Freight CJSC v. Commission*" (May 1, 2017)[10], where the Court of the EAEU endorsed the substance of the previous case law within the EurAsEC. The Court of the EurAsEC made a few efforts to rationalize and enhance its credibility, and decided that its judgements were obligatory beyond merely the parties in the dispute. This line is continued by the Court of the EAEU [Diyachenko, Entin 2017].

The draft of the amendment concerning international case law in the Constitution of Russian Federation does not hinder the rules expressly stated in the treaties of the EAEU. However, the decisions of the bodies created within the EAEU's structures and the case law of the Court of the EAEU are likely to be subject to the unquestionable supremacy of the Russian Constitution's rules.

DISCUSSION AND CONCLUSION

Academic studies have alleged that the Russian Constitution of 1993 is most friendly to international law among the countries of the post-Soviet space, as it is the only Constitution which has the "integration clause" (which is the provisions of Article 79 in the current unrevised version). The recent development of judicial practice in Russia is characterized as defensive and isolationistic, protective of state sovereignty. In relation to this, concerns were raised about the effectiveness of the Eurasian integration project [Kalinichenko 2018]. To a certain extent, these concerns may be further exacerbated with the constitutional amendment of the 2020.

The amendment to Article 79 of the Russian Constitution – reaffirming the supremacy of the Constitution over the decisions of international bodies – could tarnish the most friendly reputation the Russian Constitution currently enjoys; however, this

[10] *The General Freight Decision*. URL: http://courteurasian.org/doc-15563 (accessed 16.07.2020).

reputation is still considerable, as the main articles on international law have been left intact.

Article 15 of the Constitution provides a norm not reliant on the interpretation of whether or not an international treaty corresponds to the Russian Constitution [Shashkova, Polovchenko, Volevodz, 2019]. Article 17 of the Constitution states that in the Russian Federation, recognition and guarantees shall provide for the rights and freedoms of man and citizen according to the universally recognized principles and norms of international law and according to the Constitution.

Thus, one can say that the amendments concerning the role of international treaties have not drastically changed the essence of the existing Russian Constitution. Everything depends on the interpretation of particular provisions thereof. It has become clear and obvious that if the Constitution is amended, Russia shall still endorse all its international obligations and pledges. Article 15 (Part 1) of the Constitution will stay intact. The entrenched provisions of the Russian Constitution preclude changes to this article. The nationwide discussion shows that there is no willingness to change the general predominance of the international law in the Russian legal order.

There is an amendment related to the application of international case law as a matter of certain political pressure. On February 18, 2020, a decision was taken – predictably, and with objection from Russian authorities – by The Hague Court of Appeal. It had been a longstanding case, started in 2005 with the lawsuit from former Yukos shareholders including Yukos International, Hulley Enterprises, and Veteran Petroleum, which was brought to the Permanent Court of Arbitration in The Hague. The basic argument stated: Russia violated the provisions of the Energy Charter on the protection of investors from discrimination and from dishonest and impartial legal proceedings. The amount of claims was initially $28.3 bln, later the amount was increased to $114.2 bln.

On July 18, 2014, the Hague Arbitration gave its judgement: Russia violated the Energy Charter. The following compensations were awarded: Hulley Enterprises received $39.97 bln, Yukos International $1.85 bln, and Veteran Petroleum $8.2 bln. Moreover, Russia was to recover $65 mil in legal costs. The amount was to be paid by January 15, 2015, otherwise 3.3–3.5% of the unpaid amount was to be charged per annum.

As Russia did not pay the sum, arrests of Russian Federation property took place in Austria, Belgium, and France. After this, Russia gained an advantage by making a successful appeal to the Hague District Court, which (on April 20, 2016) decided that The Hague Arbitration did not have jurisdiction over this case. The decision in favor of Yukos shareholders had no legal grounds, and thus was unenforceable.

However, in February 2020, the Hague Court of Appeal ruled that the 2016 decision "was not correct. That means that the arbitration order is in force again". Reasonably, after this, the question is raised of why there seemed to be such a hurry with the changes to the Russian Constitution with this expected $50 bln decision.

Nonetheless, the amendments to the Russian Constitution regarding the relationship between international law and the domestic legal order have a unique and particular background, and are not of a transient nature. The authors would suggest that these changes were, to some extent, quite predictable from the traditions and development of the political and constitutional practice in Russia. The amendments, allowing international case law not to be enforced, affirm positivistic approaches to international law, preferring instead codified and accessible sources.

The approach of Russia to international law – which, to certain extent, was expressed in the 2020 amendments – has been developing for a long time. As Russian views were not in the focus of the international academic studies and since 2014 most of the studies were negatively biased, the novelty of the Constitution may come up in international academic discourses with negative prejudice. Even in this context, the constitutional changes seem to be driven by political tensions.

Before 2014, the development of Russian constitutional practice, and in particular approaches to international law, were insufficiently studied. After 2014, the Russian view on international law became a subject matter of academic discussion mostly with negative connotations. Once this negative and emotional patina is pulled back, it is clear that certain approaches to matters of international law matured in Russia. The 2020 amendments to the Russian Constitution consolidated the theoretical and empirical development towards the positivistic view. Article 15(4) of the Russian Constitution – giving priority to the international treaties in the Russian legal order – stays intact, while the case law application is restricted.

Although international law has a universal nature and cannot be fragmented, there are still sound differences in its interpretation, especially regarding the international and the domestic legal order. International law is weaved and integrated in the domestic legal order. States are accepting of the rules of the international law by means of voluntary acts. Indeed, international law cannot be imposed on sovereign states. Those states that allow international law in their legal order inevitably interpret or reinterpret it. Hence, the international rules start operating in a specific social, political, and cultural environment [Hanqin 2011]. A number of countries have cogently proven that it is possible to advance their own views and own approach to international law. This is even more obvious once the internal legal order is involved. International law is thus metaphorically compared with ultraviolet light; by the same means, international law should pass through the filter of the internal legal system to be visible [Crawford 2014]; this metaphoric filter is even more important for international case law.

It should be mentioned that in recent decades, international law has become somewhat overloaded with concepts coming from Anglo-American law: the features of the procedures in international tribunals, the enhanced case law of different natures, etc. This development was prejudicial towards those alternative legal orders which rely mostly on formal sources of international law. Thus, filters in the domestic legal orders for the international case law are a natural response to this.

Case law in international law sometimes instigates ambiguity and controversies. One case of the European Court of Justice is oft discussed in academic publications as an example of the constraints of international law and the hindrance this has created in itself – the "Kadi" case. The European Court of Justice decided that the freezing of the funds, according to the UN Security Council resolution, deprived the applicant of the right to effective judicial review; this decision protects the individual rights. By the same means, this decision by the international court limited the implementation of globally binding decisions from the UN Security Council [Oxman 2010]. Here, there is a clear demonstration of the clash between two decisions of international bodies. This also hindered the credibility of international case law and its interpretations.

Russia is actively involved in international and regional integration, including the relatively young and quite promising Eurasian Economic Union. The interaction of international, supranational, and constitutional law has different dimensions and

follows different patterns [Chirkin 2016]. Most of the matters within these integrations are expressed in the formal sources of EAEU law. EAEU law encompasses the decisions and resolutions of the Supreme Eurasian Economic Council, the Eurasian Intergovernmental Council, and the Eurasian Economic Commission, which were accepted according to their authorities provided under the Treaty on the EAEU as well as the international agreements within the EAEU. These decisions and resolutions, according to the revised Article 79, shall expressly become subject to the supremacy of the Russian Constitution. In some recent cases, the Constitutional Court of the Russian Federation has already moved in this direction. The decision of the EAEU Commission was not reviewed substantively, but the Constitutional Court accepted the claim and delivered its opinion in the sense of supremacy of the Constitutional over EAEU case law.

It should be admitted that the revision of Article 79 of the Russian Constitution does not add much to Russia's already mature approach to international law, which is in line with long-standing traditions. The text of the 2020 amendments still leaves space to interpretation considering the political context of international relations of the Russian Federation. Either it shall cover *only* the decisions of the courts or quasi-courts which need to be "enforced", or it shall cover *all* the decisions and resolutions of each and every international body. Analysis of the background, practice of the Constitutional Court, and other documents points towards the wider political and legal interpretation of the new wording.

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ПОПРАВКИ К КОНСТИТУЦИИ РОССИИ 2020 И РЕШЕНИЯ МЕЖДУНАРОДНЫХ ИНСТИТУТОВ: ПЕРСПЕКТИВЫ ЕАЭС

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Аннотация. Конституционная реформа в России – одно из главных событий для партнеров России на международной арене. Поправки, внесенные в Конституцию России в 2020 г., затрагивают вопрос соотношения международного права и внутреннего правопорядка Российской Федерации. Данные поправки мало комментировались в рамках общероссийской дискуссии о конституционной реформе и являются предметом преимущественно экспертных дискуссий. Наша статья имеет целью показать, что конституционная поправка, ограничивающая применимость международного прецедентного права в России, является не только реакцией на текущую политическую напряженность вокруг России, но и формализацией позитивистской тенденции, давно установившейся в отечественной практике. Позитивистская тенденция укладывается в процесс формирования собственного подхода России к международному праву.

Поправка, касающаяся взаимоотношения международного прецедентного права и Конституции Российской Федерации, не затрагивает нормы, содержащиеся в договорах ЕАЭС. В то же время, решения органов и структур ЕАЭС, включая решения Суда ЕАЭС, теперь будут оцениваться Конституционным судом России на предмет их безусловного соответствия Конституции РФ.

Ключевые слова: ЕАЭС, международное право, международное прецедентное право, конституционализм, конституция России, евразийская интеграция.

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