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Russian Constitution and international treaties

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Abstract

The main place of the constitutional law in the law system is ensured by its main source – the Constitution of the State. However, in recent decades, the idea of the supremacy of international law over national law-making is increasingly penetrates in the constitutional rule-making of democratic legal states. In different countries approaches to understanding the relationship of national and international law is quite separate.

Analysis of the existing constitutions of foreign countries suggests that there are three different approaches to solving this problem. One group of constitutions retains the priority of the national legislation to the norms of international treaties. Another group of constitutions establishes the equal status of international treaties and national law. The third group includes those constitutions that secure the generally accepted principles of international law and the norms of international treaties over domestic legislation.

The main task at the coordination of domestic law with international legal acts is to bring national legal standards into line with the international legal system.

Keywords

Constitution, international contracts, international law.

Introduction

Main place of the constitutional law in the branches of law system is allo-

cated by its main source – the State Constitution. However, in recent decades, the idea of the supremacy of international law over national law-making is increasingly

penetrates in the constitutional rule-making of democratic legal states. In different countries the approaches to understanding the relationship of national and international law differs drastically.

The position of states to international treaties

The analysis of existing constitutions of foreign countries suggests that there are three different approaches to solving this problem. One group of constitution retains the priority of national legislation to the norms of international treaties. Basically, they include the so-called "old constitution", for instance, the Constitution of Norway – "Article 93. In order to maintain international peace and security and cooperation among nations, the Stortinget (Norwegian Parliament) by a majority of three quarters of votes shall have the right to consent to the transfer of coercive powers to an international organization, in which activities Norway takes part or will take part. The powers cannot be delegated by the amendments to the Constitution. Such a decision, as well as amendment of the Constitution, requires the presence of at least 2/3 of the members of the Stortinget"¹.

1 "The Constitution of Norway in 1814" ["Konstitutsiya Norvegii 1814 goda"], available at: www.norge.ru/constitussia

But in some basic laws dominates this approach, e.g., in Denmark – "20. (2) The adoption of laws on the above issues requires a majority of five-sixths of votes of the total number of members of the Folketing (the unicameral parliament of Denmark. It consists of 179 deputies elected for 4 years)"². In these countries after the conclusion of an international treaty its provisions entry into force requires the adoption of a special law by the Parliament.

In another group of constitutions established the equal status of international treaties and national law. To this principle, for instance, resigns the constitution of Poland – "Article 87. 1. The source of the statutory law of the Republic of Poland are: the Constitution, laws, ratified international treaties, as well as provisions"³ and Belgium – "Article 167. § 1. The King rules the international relations regardless of the competence of communities and regions in

2 "The Constitution of the Kingdom of Denmark in 1953", *Constitutions of the European Union* ["Konstitutsiya Datskogo korolevstva 1953 goda", *Konstitutsii gosudarstv Evropeiskogo soyuza*], Norma-Infra-M, Moscow, 2009, pp. 297-314.

3 "The Constitution of the Republic of Poland in 1997", *Constitutions of the European Union* ["Konstitutsiya Respubliki Pol'sha 1997 goda", *Konstitutsii gosudarstv Evropeiskogo soyuza*], Norma-Infra-M, Moscow, 2009, pp. 245-261.

the regulation of international cooperation, including the conclusion of agreements on issues that fall within their competence under the Constitution or by virtue of the latter"⁴. This approach assumes that the effectual is the latter legal norm.

The third group includes those constitutions that secure the generally accepted principles of international law and norms of international treaties over the national legislation. This includes many of the basic laws adopted in the post-war period, for instance, in the Federal Republic of Germany – "Article 25. The generally recognized rules of international law are an integral part of federal law. They take precedence over the laws and directly create rights and duties for living citizens on the territory of the Federation"⁵ and in Portugal – "Article 8. 1. The norms and principles of general and customary international law are an integral part of Portuguese law. 2. The norms of international treaties ratified or approved properly take effect after the official publication and their implementation becomes mandatory for the Portuguese State. 3.

4 "The Constitution of Belgium in 1994" ["Konstitutsiya Bel'gii 1994 goda"], available at: <http://constitutions.ru/archives/242>

5 "Main Law of the Federal Republic of Germany on May 23, 1949" ["Osnovnoi zakon Federativnoi respubliki Germaniya ot 23 maya 1949 goda"], available at: <http://vivovoco.rsl.ru/VV/LAW/BRD.HTM>

Norms outgoing from the competent bodies of international organizations, in which Portugal takes part, act directly in domestic law as it is set in the respective constituent treaties"⁶. In accordance with constitutions of these states provided a conflict between these norms the principles of international law and the norms of international treaties concluded by the state take effect⁷.

It may be noted that the main issue within the national law norms precedence with international legal instruments is a bringing into line of national legal norms with the international legal system.

The state, which has undertaken the obligation to respect and implement in good faith the international legal acts, should harmonize their national legislation with international law. All subjects of the national law should promote the efficient use of the transnational law by the State and conscientious implementation of its interstate duties. All subsequent actions of these subjects should be consistent with provisions of international law.

6 "The Constitution of the Republic of Portugal in 1976", *Constitutions of the European Union* ["Konstitutsiya Portugal'skoi respubliki 1976 goda"], *Konstitutsii gosudarstv Evropeiskogo soyuza*, Norma-Infra-M, Moscow, 2009, pp. 158-169.

7 Talalaev, A.N. (1985), *Treaty law: effect and application of treaties* [*Pravo mezhdunarodnykh dogovorov: deistvie i primeneniye dogovorov*], Nauka, Moscow, p. 108.

Thus, the legislator is taking measures to harmonize national law with international law. Moreover, it can be seen not only as a right but as a duty of the state.

In particular, it follows from the preamble of the Vienna Convention on the Law of Treaties on 23 May 1969,⁸ which notes the increasing importance of treaties as a source of international law and as a means of developing peaceful cooperation among nations, irrespective of their differing constitutional and social systems, and orients states that a codification and progressive development of the law of contracts will contribute to achieving the objectives set forth in the Charter of the United Nations, precisely the maintenance of international peace and security, developing friendly relations among peoples and their cooperation with each other.

The Constitution of the Russian Federation and international treaties

The Basic Law of the country – in Paragraph 4 of the Article 15 of the Con-

⁸ "The Vienna Convention on the Law of Treaties (Vienna, 23 May 1969)" ["Venskaya Konventsiya o prave mezhdunarodnykh dogovorov (Vena, 23 maya 1969 g.)"], *Vedomosti Verkhovnogo Soveta SSSR*, 1986, No. 37, Art. 772.

stitution of the Russian Federation in 1993 consolidated the general rule that "generally recognized principles and norms of international law and international treaties of the Russian Federation are an integral part of its legal system. If the international treaty of the Russian Federation stipulates other rules than those entrenched by the law, than the rules of the international agreement take effect".

There are models of constitutions where a part of national law or national legal system are only considered as international treaties. It is provided, for example, by the Constitution of the United States (Article 6), Argentina (Article 31), Bulgaria (Article 5), Venezuela (Article 128), Egypt (Article 151), Kyrgyzstan (Article 12), Lithuania (Article 138), Netherlands (Article 93), Romania (Article 10), Switzerland (Article 113), Yugoslavia (Article 124), Japan (Article 98). Also known instances where provisions have been made only in respect of international law customary norms. Such exemplified in constitutional provisions of Austria (Article 9), Hungary (Article 7), Ireland (Article 29), Somalia (Article 19), Uzbekistan (Preamble), Estonia (Article 3)⁹. Russia has gone further.

⁹ Here and after the texts of the constitutions are reproduced by the GA.J. International Law and Comparative Law

There as a part of the national legal system, now considered both international treaties and customary norms of international law.

Simultaneously at the level of the Basic Law for the norms of international treaties there was assigned a contingency to act as a regulator of social relations in Russia. Moreover, in our country there is generally accepted priority of norms of the international "contractual" law upon the relevant norms of domestic law in the event of their collisions.

The aforecited principles are universal, since conclude a foundation of the international legal order. They cover both traditional and new areas of international relations, determining the direction and nature of international legal regulation in whole. The reference to the international treaties and generally accepted rules of international law appears in a number of other articles of the Constitution.

Thus, Chapter 2 "The rights and freedoms of human being and citizen" starts with the provision that the Russian Federation recognizes and guarantees the rights and freedoms of human being and citizen according to the universally recognized principles and norms of international law and in accordance with the Constitution of the Russian Federation (Part 1, Article 17). In this very

chapter the reference to international treaties is also contained in Articles 62 and 63.

In the Russian Federation the issues of contracting along with the norms of international law are governed by the federal law "On International Treaties of the Russian Federation" No. 101-FZ¹⁰. Under the international agreement is understood the agreement concluded by the Russian Federation with a foreign state (or states), or with an international organization in writing, governed by international law (Article 2 of the Federal Law No. 101). Ratification of international treaties is conducted in the form of the federal law (Article 14 of the Federal Law No. 101).

The priority of international rules only applies to ordinary laws, but not to constitutional norms. State authorities and officials shall not enter into contracts that are contrary to the Constitution of the Russian Federation. If such an agreement is concluded, than the constitutional rules take effect, otherwise it would

10 "Federal Law "On International Treaties of the Russian Federation". Adopted by the State Duma of the Russian Federation on 16.06.1995" ["Federal'nyi zakon "O mezhdunarodnykh dogovorakh Rossiiskoi Federatsii". Prinyat Gosudarstvennoi Dumoi GD FS RF 16.06. 1995 g."], *Sobranie zakonodatel'stva RF*, 1995, No. 29, Art. 2757.

amount to a denial of state sovereignty. This situation inevitably raises the question of the relationship between norms of the Constitution and international law.

It is commonly known that the Russian Constitution is a supreme legal force, taking a direct effect and applying to the entire territory of the Russian Federation. Part 2 of the Paragraph 1 of the Article 5 of the Russian Constitution provides that laws and other legal acts adopted in the Russian Federation shall not contradict the Constitution. A literal interpretation of this provision may lead us to the conclusion that constitutional norms claim priority eminently over intrastate acts adopted by the Russian Federation in the process of law-making, and do not take precedence over the generally recognized rules of international law and international treaties of the Russian Federation¹¹.

However, as rightly pointed out in Comments to the Constitution of the Russian Federation, "the mentioned pro-

vision (Part 2, Paragraph 1, Article 15) only specifies the argument of higher legal force of the Constitution of the Russian Federation"¹². In other words, the higher legal force of the Russian Constitution applies not only to all domestic regulations, including laws, but also to norms of the general and conventional international law, which became a part of the Russian legal system.

This provision is confirmed in a number of Regulations of the Constitutional Court. For instance, the Regulations of the Constitutional Court of the Russian Federation on March 27, 2012 N 8-P¹³ states that "the Constitution of the Russian Federation does not establish a direct order and conditions of conclusion, execution and termination of

¹² Ibid. P. 94.

¹³ "Decision of the Constitutional Court of the Russian Federation on March 27, 2012 N 8-P "In the case on the constitutionality of Paragraph 1 of the Article 23 of the Federal Law "On International Treaties of the Russian Federation" in connection with a complaint of a citizen I.D. Ushakov" ["Postanovlenie Konstitutsionnogo Suda RF ot ot 27 marta 2012 g. N 8-P "Po delu o proverke konstitutsionnosti punkta 1 stat'i 23 Federal'nogo zakona "O mezhdunarodnykh dogovorakh Rossiiskoi Federatsii" v svyazi s zhaloboi grazhdanina I.D. Ushakova"], available at: <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=127872>

¹¹ Borisov, A.B. (2009), *Commentary on the Constitution of the Russian Federation (article-by-article). With comments of the Constitutional Court of the Russian Federation [Kommentarii k Konstitutsii Rossiiskoi Federatsii (postateinyi). S kommentariyami Konstitutsionnogo suda RF]*, Yurlitinform, Moscow, p. 93.

international treaties of the Russian Federation, and places the solving of these issues on federal lawmaker (Article 71, Paragraph "k"; Article 72, Paragraph "o" of the Part 1; Article 76, Parts 1 and 2), who has considerable discretion in the implementation of the relevant legal regulations and in the meantime must follow the requirements of the Constitution of the Russian Federation".

Conclusion

In summary, the international treaties of the Russian system of law have a subordinate position in relation to the norms of the Constitution of the Russian Federation, and in the event of collisions between the norms of the Constitution and the norms of the international treaty the priority is placed on the norms of the Russian Constitution.

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Конституция России и международные договоры

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Аннотация

В статье поднимаются вопросы соотношения национального и международного права. Анализируются подходы к пониманию соотношения нацио-

нального и международного права сложившиеся в конституционном праве зарубежных государств. Выявляется специфика соотношения Конституции Российской Федерации и международных договоров, делается вывод о подчиненном положении последних.

Ключевые слова

Конституция, международные договоры, международное право.

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