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Human Rights: the Integrity of Russian and International Law and the Competition of Court Decisions[1]

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Abstract. The amendments to the Russian Constitution in 2020 challenged de novo the prevalence of international law and led Russia to search for its own perception of international law. Although the amendments did not introduce drastically substantive modifications to the international law modus operandi in the national legal system, they nevertheless shifted the constitutional focus. The previous version of the Constitution of the Russian Federation was built on the presumption of the juridical consistency of the constitutional order and Russia's international commitments. Today there is the a priori suggestion of possible conflicts between the requirements of the Constitution and the judgments of international courts. The paper comprises a short historical analysis of the internationally meaningful rules of the Constitution in its comparison to the current legal situation in Russia. A relatively superficial but illustrative juridical overview of the relevant constitutional provisions with their domestic legal counterparts demonstrates the significance and practical efficiency of the concomitant interpretation of the constitutional rules and Russia's international obligations. Paradigmatically, such a shift is still awaiting a new interpretation of the fundamentals of the Constitution. At the very least, they need to be constructed differently in order to be concomitant with the refusal mechanism (as regards international judgments). Still, unchanged, the constitutional fundamentals verbatim provide for a proliferated mechanism of human rights protection under international law within domestic order and still require the concordant interpretation of the international commitments and constitutional rules. The modified constitutional landscape drastically shifted the priority of international law in the Russian legal system. Although international law leaves it to the State to determine the status of its international commitments, the constitutional fundamentals (left untouched verbatim) still require international law to be the priority. The constitutionally enclosed human right protection mechanism emphasizes such a priority.

Keywords: Constitution of the Russian Federation, fundamentals of the constitutional order, human rights, general international law; right to refusal, international human rights standards

[1] English translation from the Russian text: Lazutin L.A., Likhachev M.A. 2021. Prava cheloveka: edinstvo rossijskogo i mezhdunarodnogo prava, konkurencija reshenij sudov. *Moskovskiy Zhurnal Mezhdunarodnogo Prava [Moscow Journal of International Law]*. 3. P. 31-44. https://doi.org/10.24833/0869-0049-2021-3-31-44

Introduction. Dynamics of the Issue: 1993 vs. 2021

Every era is unique in its own way. The same words, spoken at different times, in different places, and even by different people, have different values. It is a truism to say that it is context that imbues the text with meaning.

To commemorate the 25th anniversary of the Russian constitution, then Prime Minister and current Deputy Chairman of the Security Council of the Russian Federation Dmitry Medvedev published a policy article that not only soberly described the established principles of law enforcement in Russia, but also, we dare to assume, set the tone for the country's human rights practices for several years to come (Medvedev, 2018: 11). For a complete understanding of this idea, let us take a rather lengthy quote from the article:

> *Recognizing and protecting human rights, the Russian Constitution sets the limits of claims to protect such rights, and does not recognize as rights those that clearly conflict with values that are traditional for Russian society. Thus, the very idea of human rights receives a new reading in relation to other constitutions and denotes a special, original and non-standard approach to the perception of human rights.*

Medvedev goes on to discuss the challenges to "equal dialogue between national and international justice" and "external intrusion" into the "judicial and legal sovereignty of the country."

Allow us to offer some subjective comments and you can judge for yourselves. An important message of Medvedev's article is that human rights are a claim of the person to the state. Not all human rights are included in the set of values that are traditional for Russian society and thus protected by the state, and in some cases the two directly contradict each other. In some situations, human rights are an instrument of external intrusion into domestic sovereignty. Finally, and most importantly, human rights are limited by socially significant interests.[2]

This is the reading of the Russian Constitution in 2018, and there is no reason to believe that this paradigm has changed in 2021.

[2] Curiously, it is precisely this logic of the balance of public and private interests – human rights and socially significant goals – that is reflected in the decision of the Constitutional Court of the Russian Federation on the restrictions of the freedom of movement, based on the decision of the regional authorities. See: Decision No. 49-P of the Constitutional Court of the Russian Federation on the Issue of Examining the Constitutionality of Paragraph 5, subparagraph 3 of the Resolution of the Governor of the Moscow Region "On the Introduction of a Regime of High Alert in the Moscow Region for the Authorities and the Moscow Regional System for the Prevention and Elimination of the Consequences of Emergencies, and Certain Measures to Prevent the Spread of the Novel Coronavirus Infection (COVID-2019) on the territory of the Moscow Region" in Connection with the Request of the Protvinsky City Court of Moscow Region, dated December 25, 2020. URL: http://www.consultant.ru/document/cons_doc_LAW_372430/ (accessed: 15.05.2021). (In Russian).

At the 1993 Constitutional Conference of the Russian Federation, the meeting that produced the document Medvedev would go on to interpret 25 years later, T.G. Morshchakova,[3] a Judge of the Constitutional Court at the time, stated when discussing what we now know as Part 1 of Article 17 of the Constitution: "I don't think we should skimp like that on human rights."[4] For the sake of objectivity, here are a few more interesting quotations from those who attended the meeting that clearly illustrate the emotional tone of the event: "… the Constitution does not list every single human right […] we are bound not only by international law and written law, but also by the *principles of international law, which receive new content from time to time*" [*italics here and throughout the text added by the authors* – authors' note];[5] "… these standards [in the field of human rights] are in some cases not expressed in international treaties ratified by the Russian Federation. Some of these documents are adopted through voting, others are not voted on even at the UN General Assembly, yet they are recognized by the entire international community. That is, these standards are far richer than what is fixed and ratified in any international treaty"[6]; "Our [human rights] standards could not be lower. In this sense, the minimum is set by the international level, which we can increase as much as we like, if we have the courage to do so."[7]

Let us indulge ourselves with a few subjective comments here. There is no doubt that the lawmakers who drafted the Constitution included the notion of human rights as the highest good and a priority value for society and, moreover, for the state (Alekseev, 2009: 12, 28). The basis for this premise is the existence of constitutional guarantees alongside international guarantees, since the latter are less dependent on an individual state and its policies. That is, the presumption of the axiological priority of international law in the protection of human rights.

This was how the 1993 Russian Constitution was understood. And there is every reason to believe that this paradigm has shifted significantly in Russian during the 21st

[3] Tatyana G. Morshchakova served as a Constitutional Court Judge from 1991 to 2002, and as a member of the Presidential Council for the Development of Civil Society and Human Rights from 2004 to 2019. (In Russian).

[4] *Constitutional Conference of the Russian Federation. Transcripts, Materials, Documents. April 29 – October 10, 1993.* 1995. Vol. 19. Eds. S.A. Filatov, V.S. Chernomyrdin, S.M. Shakhray, Y.F. Yarov, A.A. Sobchak, and V.F. Shumeyko. Moscow: Yuridicheskaya literatura. P. 23. (In Russian).

[5] Remark by the Director of the Legal Department of the Ministry of Foreign Affairs of the Russian Federation Evgeny Prokhorov. See *Constitutional Conference of the Russian Federation. Transcripts, Materials, Documents. April 29 – October 10, 1993.* 1995. Vol. 2. Eds. S.A. Filatov, V.S. Chernomyrdin, S.M. Shakhray, Y.F. Yarov, A.A. Sobchak, and V.F. Shumeyko. Moscow: Yuridicheskaya literature. P. 104. (In Russian).

[6] Remark by the Head of the Working Group of the State Legal Department of the President of the Russian Federation Yuri Stetovsky. See: *Constitutional Conference of the Russian Federation. Transcripts, Materials, Documents. April 29 – October 10, 1993.* 1995. Vol. 3. Eds. S.A. Filatov, V.S. Chernomyrdin, S.M. Shakhray, Y.F. Yarov, A.A. Sobchak, and V.F. Shumeyko. Moscow: Yuridicheskaya literature. P. 282. (In Russian).

[7] Remark by Tatyana G. Morshchakova. See: *Constitutional Conference of the Russian Federation. Transcripts, Materials, Documents. April 29 – October 10, 1993.* 1995. Vol. 19. Eds. S.A. Filatov, V.S. Chernomyrdin, S.M. Shakhray, Y.F. Yarov, A.A. Sobchak, and V.F. Shumeyko. Moscow: Yuridicheskaya literature. P. 24. (In Russian).

century (Ispolinov, 2020: 65–66).[8] The 2020 constitutional reform laid out the value bases for these changes.

The 2020 Constitutional Reform: A View from the Inside (of the Constitution)

The constitutional reform of 2020 left the fundamental provisions of Chapter 1 and Chapter 2 of the Constitution of the Russian Federation unchanged.[9] Their precepts, dictated by the spirit of the priority of human rights and their recognition as the "supreme value" (Article 2), unequivocally create a balanced system of human rights protection based on the priority of international law. In this sense, the proposals made by those who oppose such priority to human rights by amending Article 15, Paragraph 4 appear to be restrictive (Bastyrkin, 2008).[10] This norm, important as it may be, is nevertheless just one of a number of constitutional guarantees of ensuring human rights in accordance with the highest universal standards.

We do not see any need for extensive explanations of the content of the constitutional norms of Article 15, Paragraph 4. We will only note that here the Constitution of the Russian Federation establishes a mechanism (reasons, conditions, consequences) for the universally recognized principles and norms of international law and international treaties to which the Russian Federation is a party to be applied directly in the domestic legal system, thus guaranteeing the priority of the conventional obligations of the state over its legislation (Belov, 2020; Zimnenko, 2010; Ivanenko, 2010: 31; Ispolinov, 2017: 79; Marochkin, 2011; Punzhin, 2010: 254).[11] In the international legal understanding, Article 15, Paragraph 4 of the Constitution is a general norm that ensures the "presence" of international law in the Russian legal order (Chernichenko, 2017: 27).

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[8] See also: Loffe Y. 2020. The Amendments to the Russian Constitution: Putin's Attempt to Reinforce Russia's Isolationist Views on International Law? *EJIL: Talk*. January 29. URL: https://www.ejiltalk.org/the-amendments-to-the-russian-constitution-putins-attempt-to-reinforce-russias-isolationist-views-on-international-law/ (accessed: 15.05.2021). (In Russian).

[9] Law No. 1-FKZ of the Russian Federation on the Amendment to the Constitution of the Russian Federation "On Improving the Regulation of Certain Issues of the Organization and Functioning of the Public Authorities" dated March 14, 2020. URL: http://publication.pravo.gov.ru/Document/View/0001202003140001 (accessed: 15.05.2021). (In Russian).

[10] Gordeyev V. 2015. A.I. Bastyrkin Proposes Removing All Norms of International Law from Constitution. RBC. July 23. URL: https://www.rbc.ru/politics/23/07/2015/55b134f99a7947c75371e03b (accessed: 17.05.2021). (In Russian).

[11] There is a vast amount of academic literature on this subject. Without giving preference to individual authors and their works, we can identify a number of official acts that prescriptively reveal the meaning and conditions for the functioning of this constitutional norm: Decree No. 5 of the Plenum of the Supreme Court of the Russian Federation "On the Application by Courts of General Jurisdiction of Generally Recognized Principles and Norms of International Law and International Treaties of the Russian Federation" dated October 10, 2003; Decree No. 21-P of the Constitutional Court of the Russian Federation dated July 14, 2015 on the Issue of Examining the Constitutionality of the Provisions of Article 1 of the Federal Law "On the Ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols thereto," Article 32, Parts 1 and 2 of Federal Law "On the International Treaties of the Russian Federation," Article 11, Parts 1 and 4 and Article 392 Paragraph 1, Part 4 of the Civil Procedural Code of the Russian Federation, Article 13, Parts 1 and 4 and Article 311, Paragraph 4, Part 3 of the Arbitration Procedural Code of the Russian Federation, Article 15, Parts 1 and 4 and Article 350, and Paragraph 4, Part 1 of the Code of Administrative Procedure of the Russian Federation and Article 413, Paragraph 2, Part 4 of the Code of Criminal Procedure of the Russian Federation in Connection with the Request of a Group of Deputies of the State Duma of the Russian Federation.

Article 17, Paragraph 1 of the Constitution of the Russian Federation forms an integral part of the constitutional regime for the protection of human rights. The remarks of the participants in the 1993 Constitutional Conference of the Russian Federation cited above referred precisely to the wording of this norm. The generally recognized principles and norms of international law operate directly in the Russian legal system (Article 15, Part 4) and determine the meaning and content of human rights (Article 17, Paragraph 1). A July 14, 2015 resolution of the Constitutional Court of the Russian Federation determined the absolute priority of the Constitution of the Russian Federation over all other norms, including international law, in force in the country's legal system: "It is the obligation of the Russian Federation to ensure the supremacy of the Constitution within its legal system, which in the event of any conflicts in this are forces it […] to give preference to the requirements of the Constitution and thereby not follow the rulings of the European Court of Human Rights to the letter if its implementation would be contrary to constitutional values."[12]

In this sense, as far as lawmakers are concerned, the issue has been resolved and put to rest in academic disputes *de lege lata*. However, it is difficult to not quote the participants in the discussion at the Constitutional Conference in 1993. Such assessments have steadily moved into the category of *lex ferenda*. Thus, B.N. Topornin, a full member of the Russian Academy of Sciences, summed up the disputes about the relationship between the country's constitution and its international obligations and offered up the idea of interlinking the content of the Constitution and the international legal guarantees of human rights. In his opinion, it is important to "demonstrate loyalty" to "international standards" as well as to "the country's Constitution." However, the nevertheless stressed that priority should be given to the former: "if the [Basic] law contradicts certain international norms, then we need to look at the law we are adopting. And if this *law* complies with those norms, as we now understand it, then we must state that we are referring to that law first and foremost."[13] In response, Sergey Filatov, the head of Boris Yeltsin's Presidential Administration, proposed the following wording for the final text: "in accordance with the generally recognized principles and norms of international law and with the current Constitution." Moreover, the author of this clause concluded, "I want to put the word 'Constitution' in the right place," because "we need to give priority to international treaties here."[14]

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[12] Decree No. 21-P of the Constitutional Court of the Russian Federation "On the Issue of Examining the Constitutionality of the Provisions of Article 1 of the Federal Law 'On the Ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols thereto,' Article 32, Parts 1 and 2 of Federal Law 'On the International Treaties of the Russian Federation,' Article 11, Parts 1 and 4 and Article 392 Paragraph 1, Part 4 of the Civil Procedural Code of the Russian Federation, Article 13, Parts 1 and 4 and Article 311, Paragraph 4, Part 3 of the Arbitration Procedural Code of the Russian Federation, Article 15, Parts 1 and 4 and Article 350, and Paragraph 4, Part 1 of the Code of Administrative Procedure of the Russian Federation and Article 413, Paragraph 2, Part 4 of the Code of Criminal Procedure of the Russian Federation in Connection with the Request of a Group of Deputies of the State Duma of the Russian Federation" dated July 14, 2015. URL: https://rg.ru/2015/07/27/ks-dok.html (accessed: 15.05.2021). (In Russian).

[13] *Constitutional Conference of the Russian Federation. Transcripts, Materials, Documents. April 29 – October 10, 1993.* 1995. Vol. 19. Eds. S.A. Filatov, V.S. Chernomyrdina, S.M. Shakhray, Y.F. Yarov, A.A. Sobchak, and V.F. Shumeyko. Moscow: Yuridicheskaya literature. P. 28. (In Russian).

[14] Ibid., P. 29.

Moving away from the issue of the relationship between the *Constitution* of the Russian Federation and international legal norms (let us reiterate that the Constitutional Court spoke quite clearly on this), let us note the special, priority role of the generally recognized principles and norms of international law in the sphere of human rights protection in comparison with Russian *legislation*. These principles and norms are intended to serve as a guarantee against legislative abuse when restricting human rights.

The substantive counterbalances to the zeal with which the state restricts human rights are supplemented by a number of procedural conditions. Article 46, Part 3 of the Constitution of the Russian Federation establishes the constitutional right of citizens to appeal to international bodies for the protection of human rights and freedoms if all the existing internal state means of legal protection have been exhausted. Even if the national system, which is focused on the generally recognized principles and norms of international law (Article 15, Part 4 and Article 17, Part 1) fails to satisfy the legitimate interests of the person who sought a remedy to the situation in the state (and who has exhausted all such means at the domestic level), the citizen always has the opportunity to turn to those who, thanks to international agreements, have the advantage in terms of establishing such generally recognized principles and norms. The European Court of Human Rights, for example, has such powers (Vaypan, 2016: 107–124). Even critics of the Court recognize the axiological significance of Article 46, Part 3 of the Constitution of the Russian Federation (Novoseltsev, Stepanyugin, 2021: 53).

Logically, Article 55 of the Constitution completes and, dare we say, *verbatim* perfects the mechanism for protecting human rights. Interpreted systematically, with due account of its semantic and functional place in the text of the Constitution, it establishes at least three fundamental guarantees against possible abuses by the state in the restriction of human rights. First, it confirms the priority of *universally recognized* rights of man and citizen and the inadmissibility of the rejection or derogation of such rights just because they are not included in the constitutional list of human rights (Part 1). Second, laws cannot be adopted in the Russian Federation that cancel or derogate human rights and freedoms, including those that are confirmed at the level of the generally recognized principles and norms of international law (Article 55, Part 2, in conjunction with Article 17, Part 1). Third, the presumption of unlimited human rights in content and action is supported by a *numerus clausus* of exceptions to this principle: "The rights and freedoms of man and citizen may be limited by the federal law only to such an extent to which it is necessary for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, for ensuring defence of the country and security of the State" (Article 55, Part 3).

The Constitutional Court of the Russian Federation has repeatedly drawn attention to the organic connection of the relevant provisions of Articles 15, 17, 46 and 55 of the Constitution of the Russian Federation, which together form a body of firm constitutional and legal guarantees for the observance and provision of internationally recognized human rights and freedoms. Russia's international obligations in terms of

human rights line up with the constitutionally enshrined obligation to provide and guarantee human rights in accordance with the generally recognized principles and norms of international law. In the event that the system fails, the citizen has the constitutional right to call the state to account by filing a complaint with international human rights protection organizations.

In regards to the connection between Article 17, Part 1 and Article 46, Part 3 of the Russian Constitution, the Constitutional Court wrote: "… the Russian Federation does not have the right to avoid giving an adequate response to the considerations of the Human Rights Committee […] Otherwise, it would not only call into question the compliance of the Russian Federation with the obligations assumed voluntarily under the International Covenant on Civil and Political Rights, and thereby testify to the failure to fulfil the obligation of the state to recognize and guarantee human rights and freedoms enshrined in Articles 2 and 17 (Part 1) of the Constitution of the Russian Federation in accordance with the generally recognized principles and norms of international law, but it would also render pointless the right of all, as specified in Article 46 (Part 3) of the Constitution of the Russian Federation, and in accordance with such international agreements, to appeal to international bodies for the protection of human rights and freedoms, if all the existing internal state means of legal protection have been exhausted."[15]

According to the Constitutional Court, the connection between Article 15, Part 4 and Article 46, Part 3 of the Constitution consists in the fact that, "according to the Constitution of the Russian Federation, everyone has the right, as set out in international treaties, to appeal to international bodies for the protection of human rights and freedoms, if all the existing internal state means of legal protection have been exhausted" (Article 46, Part 3). The prescriptions of Article 15 (Part 4) of the Constitution of the Russian Federation, which establishes that the international treaties of the Russian Federation are a component part of its legal system, correlate with this provision.[16] At the same time, the conclusions of the Constitutional Court on the place of the European Convention on Human Rights in the Russian legal system, *mutatis mutandis,* can be fully attributed to the norms of international law in general: "The Human rights and freedoms enshrined in the Constitution of the Russian Federation and the Convention

[15] Determination No. 1248-O of the Constitutional Court of the Russian Federation "On the Complaint of Private Citizen Khoroshenko, Andrey Anatolyevich, Regarding the Violation of His Constitutional Rights by Article 403, Paragraph 5, Article 413, Part 4, and Article 415, Parts 1 and 5 of the Code of Criminal Procedure of the Russian Federation" dated June 28, 2012. P. 4. URL: https://www.garant.ru/products/ipo/prime/doc/70104350/ (accessed:15.05.2021). (In Russian).

[16] Decree No. 21-P of the Constitutional Court of the Russian Federation "On the Issue of Examining the Constitutionality of the Provisions of Article 1 of the Federal Law 'On the Ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols thereto,' Article 32, Parts 1 and 2 of Federal Law 'On the International Treaties of the Russian Federation,' Article 11, Parts 1 and 4 and Article 392 Paragraph 1, Part 4 of the Civil Procedural Code of the Russian Federation, Article 13, Parts 1 and 4 and Article 311, Paragraph 4, Part 3 of the Arbitration Procedural Code of the Russian Federation, Article 15, Parts 1 and 4 and Article 350, and Paragraph 4, Part 1 of the Code of Administrative Procedure of the Russian Federation and Article 413, Paragraph 2, Part 4 of the Code of Criminal Procedure of the Russian Federation in Connection with the Request of a Group of Deputies of the State Duma of the Russian Federation" dated July 14. 2015. URL: https://rg.ru/2015/07/27/ks-dok.html (accessed: 15.05.2021). (In Russian).

are essentially compatible: differences arise in their interpretation by the European Court," and "Russia's accession to the Convention and its participation in it are a result of the very adoption, observance and functioning of the Constitution of the Russian Federation" (Ispolinov, 2017: 80–81).[17]

While the 2020 constitutional reform kept the provisions of Chapters 1 and 2 of the Constitution intact, there is no denying the impact that the amendments to Article 79, as well as to Article 125 that serve it on the basis of Russian law, have had (Ispolinov, 2020: 63; Mälksoo, 2021: 88). At the bare minimum, the possibility of refusing to execute the decisions of international bodies regarding the protection of human rights directly concerns the constitutional right to appeal to such bodies under Article 46, Part 3. We will not get into an assessment of the compatibility of the fundamental guarantee that forms the basis of the constitutional order (Article 46, Part 2) here, and the updated Article 79 is a question for a more detailed and separate analysis. However, it is rather odd that Articles 17 and 46 of the Constitution are not mentioned at all in the opinion of the Constitutional Court in connection with the updated constitutional system.[18] The Court was satisfied with the assessment of the amendments for their compliance with Article 15, Part 4 of the Constitution, thus ignoring the previous argumentative practice of analysing the articles of the Constitution that relate to "international law" (Articles 15, 17, 46 and 55) as a single whole (Mälksoo, 2021: 92). The Court's arguments boil down to two *circulus vitiosus in probando* statements: "these provisions, as directly follows from their wording, do not imply the refusal of the Russian Federation to comply with the international treaties themselves or fulfil its international obligations, and therefore do not conflict with Article 15," and "this mechanism is intended not to create grounds to refuse to execute international treaties and the decisions of inter-state jurisdictional bodies based on them, but to develop a constitutionally acceptable way of executing such decisions by the Russian Federation while ensuring that the Constitution of the Russian Federation holds the highest legal force in the Russian legal system, an integral part of which are unilateral and multilateral treaties to which Russia is a party."

In this case, the Constitutional Court sidestepped the issue of harmonizing the guarantees of Article 46 and the so-called "right to object" of the Russian Federation, leaving it open. A reasoned position of the Court on this matter would have contributed to ensuring "the supremacy of human rights and the national constitution" (Ispolinov, 2020: 69) in the Russian legal order.

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[17] Ibid.

[18] Opinion No. 1-Z of the Constitutional Court of the Russian Federation "On the Compliance of the Unenacted Provisions of the Law of the Russian Federation on the Amendments to the Constitution of the Russian Federation 'On Improving the Regulation of Certain Issues of the Organization and Functioning of the Public Authorities with Chapters 1, 2 and 9 of the Constitution of the Russian Federation,' as well as on the Compliance of the Procedure for the Entry into Force of Article 1 of this Law with the Constitution of the Russian Federation in Connection with the Request of the President of the Russian Federation" dated March 16, 2020. URL: http://publication.pravo.gov.ru/Document/View/0001202003160037?index=1&rangeSize=1 (accessed: 15.05.2021). (In Russian).

It is hardly appropriate here to remind the reader about the subjectivity of scholars in academic works. Claims to objectivity have to be supported by arguments and evidence. In this sense, any argument that an author is being subjective in their opinion without evidence is nothing more than speculation. We are confident that our task in terms of argumentation *de lege lata* is complete. Now, having established the right constitutional context, let us move on to some *de lege ferenda.*

The Russian Constitution and International Standards (some assessments)

The established traditional understanding of the legal status of the individual as the embodiment of the rights and freedoms enshrined in the Constitution of the Russian Federation and existing Russian legislative acts is no longer consistent with the multifaceted content of such status, since international legal norms play an increasingly important role in its regulation. This is clearly stated in Article 17, Part 1 of the Constitution of the Russian Federation.

Article 17, Part 1 of the Constitution of the Russian Federation fails to mention one crucial detail – a reference to the international treaties of the Russian Federation. Perhaps the wording "and according to the present Constitution" would allow legal practitioners to refer to Article 15, Part 4 of the Constitution, which states that the international treaties of the Russian Federation, applied directly to the activities of courts, prosecutors, law enforcement agencies, bodies of executive power, and especially in ensuring and protecting human rights and freedoms, are also a component of the Russian legal system. As Professor G.V. Ignatenko notes, "the only way to overcome the inconsistency in the two constitutional formulations is to eliminate it. A perfect way to do this would be to perform an intra-constitutional comparison, that is, an interpretation of the norm of Article 17, Part 1 in the context of the norm of Article 15, Part 4" (Ignatenko, 2003: 9). In such situations, it would be wide to seek a solution to the problem in an agreed interpretation and combined application of these constitutional norms.

The general understanding of Article 37, Part 2 of the Constitution of the Russian Federation can be used as an example here: "Forced labour shall be banned." However, there is no explanation of what exactly "banned" means. At the same time, international legal acts, including the conventions of the International Labour Organization, the International Covenant on Civil and Political Rights (1966) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), contain a list of types of work or service that are not included in the category of forced labour.

It may seem obvious that the constitutional prescription should only be applied in conjunction with the provisions of these international treaties. This task is all the easier today, since the Labor Code of the Russian Federation, whose principles are based on international law, includes Article 4 – "Prohibition of Forced Labor" – which supplements the prohibition with content that reproduces or elaborates on international regulations.

In this context, the judgement about the independent value of the rights and freedoms enshrined in international acts is fair (Peters, 2009: 190; Peters, 2016: 192–193). The norms of the relevant federal laws provide a compelling argument in favour of a comprehensive assessment of the status of the individual in international and Russian law, specifically: the wording of Article 3 of the Federal Constitutional Law "On the Judicial System of the Russian Federation," Article 7 of the Civil Code of the Russian Federation, Article 1 of the Code of Criminal Procedure of the Russian Federation,[19] and other Russian regulations, as well as the practice of the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation and a number of constitutional and statutory courts of the constituent entities of the Russian Federation.

When formulating decisions on cases where the Constitution and federal laws of the Russian Federation and the international treaties to which it is a party must be considered, courts must keep in mind the fact that the rights enshrined in both the Constitution and federal acts of the Russian Federation, on the one hand, and those formulated in the International Covenant on Civil and Political Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms and other international treaties, on the other, are subjective human and civil rights with unambiguous legal ramifications, including the protection of the law (up to and including judicial defence).

In this sense, international standards of human rights and freedoms have a dual nature. On the one hand, they set out the international obligations of the state taken on as a result of the conclusion of an international treaty or participation in an interstate practice that has become an international custom. In other words, international human rights standards are international obligations of the state.

On the other hand, these standards directly address their main beneficiaries – individuals, and in some cases, legal entities. International standards contain specific powers that belong to the person and constitute his or her status under international law and, indirectly by the will of the state, under domestic law.

In the Russian doctrine, the so-called theory of mediation, which states that an individual cannot directly have rights and bear obligations under international law without being a subject of international law (Zimnenko, 2006: 82–96; Ivanenko, 2010: 135–161; Usepenko, 2008: 135; Chernichenko, 2009: 637–640). The individual's internationally recognized rights and freedoms are addressed to states only, which are entrusted with the obligation to ensure them through an internal state mechanism.

This approach has its ideological roots in the concept of denying the international legal personality of the individual that dominated in the Soviet theory of international

[19] Although there is a terminological inaccuracy in the Code of Criminal Procedure of the Russian Federation: the generally recognized principles and norms of the international treaties of the Russian Federation are referred to as part of Russian legislation, and not part of its legal system.

law. The individual cannot directly have rights and bear obligations under international law (Course …, 1967: 161–165; Course …, 1989: 159-181). International human rights norms are applied indirectly to the individual, embodied in the norms of domestic law only.

It is difficult to accept this position in the current realities. Not only do international human rights standards outline the duty of the state as a party to the relevant international agreement or an executor of an international custom, but they also directly grant rights to the individual and even impose abstract obligations on him or her that are to be applied directly within the national jurisdiction and focus on the direct regulation of relations within the state.

International human rights standards are an integral component of the status of the individual under international and domestic law. This much is clear from the wording of most international treaties on human rights at the regional and universal levels, which often looks something like this: "All peoples have the right…" (the 1966 International Covenant on Civil and Political Rights); "Everyone has the right…" "Everyone's right to…" "No one shall be…" (the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms); "Everyone has the right… (the 1948 Universal Declaration of Human Rights); "Woman shall be entitled…" "Woman shall be eligible…" (the 1953 Convention on the Political Rights of Women). These provisions proceed from the fact that rights and freedoms are granted to the individual, while the state assumes obligations to ensure and comply with human rights standards.

Judicial protection of human rights and freedoms is rightly considered an effective legal means to ensure their consistent implementation. The traditional mechanism for protecting human rights is the activity of national courts as a type of state authority. The norms of domestic law, primarily constitutional regulations, serve as a regulator of this activity. One of these norms in Article 46, Part 1 of the Constitution of the Russian Federation: "Everyone shall be guaranteed judicial protection of his rights and freedoms."

Interest in national judicial activity is also inherent in international legal regulation. The 1948 Universal Declaration of Human Rights states: "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law" (Article 8). The 1966 International Covenant on Civil and Political Rights expresses same concept, but in a slightly different form: "In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law" (Article 14, Paragraph 1). The 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms also contains similar provisions (Article 6, Paragraph 1).

The special attention that Russian and international legal norms typically pay to national judicial mechanisms manifests itself in situations where the issue of protecting human rights and freedoms assumes a global character. The Constitutional Court

of the Russian Federation has repeatedly referred in its decisions and rulings to Article 14 of the International Covenant on Civil and Political Rights and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms to justify the rights guaranteed not only by the Constitution of the Russian Federation, but also by the norms of international law.

The Constitutional Court of the Russian Federation pays special attention to the judicial protection of human and civil rights and freedoms as a mutually agreed process that combines national and international mechanisms, including those mentioned above. The Court has repeatedly confirmed in its decisions the right of every person and citizen, in accordance with the international treaties of the Russian Federation, to appeal to international bodies for the protection of human rights and freedoms, if all the existing internal state means of legal protection have been exhausted, as provided for by Article 46, Part 3 of the Constitution of the Russian Federation.

The most effective system for considering individual appeals (complaints) and delivering a legal response to human rights violations by state bodies or officials has developed within the Council of Europe in accordance with the European Convention for the Protection of Human Rights and Fundamental Freedoms and the protocols thereto.

Article 13 of the Convention proclaims the right to "an effective remedy." In other words, any person whose rights and freedoms are violated has the right to legal protection in a state body. And while the text of the Convention does not contain any special provisions on the right to legal protection in an inter-state body, this right is effectively assumed in the wording of Article 34 on the competence of the European Court of Human Rights to receive applications from any person, non-governmental organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto. According to the wording of that same article, the contracting states undertook "not to hinder in any way the effective exercise of this right." Obviously, "this right" here does not refer to the right of the Court to receive applications, but to the right of the individual to send applications to the Court.

In continuation of Article 6 of the Universal Declaration of Human Rights, Article 16 of the International Covenant on Civil and Political Rights establishes that "Everyone shall have the right to recognition everywhere as a person before the law." This norm can be considered not only in the spatial, but also in the legal aspect, bearing the universality of the individual legal personality in relation to the national and international legal order in mind. A different understanding of the legal personality of the individual within the framework of national law – one that limits said legal personality – leads to a "break in the structure of its legal status" (International Law and…, 1991: 27). To this, we can add that a different approach would divide the content of the dignity of the individual as a legal category into two unequal and completely separate components: dignity, realized in the complex of the individual's efforts and the protective activity of the state (the internal/domestic component of dignity), and the dignity

provided exclusively by the state outside the independent actions of the individual (the international component of dignity). The first case presumes interaction between the legal personality of the individual and the states, while the second rejects the legal personality of the individual and, as it were, deals with the legal personality of the state only.[20]

The opinion of Professor G.V. Ignatenko is curious in this regard. Ignatenko believed that so-called state assistance can also manifest itself at home (domestically), assuming that relations between different levels of subjects are normal. At the international level, if we ignore the paternalistic attitude that is evident in the above phrase, we can point to the conscientious fulfilment by the state of its international obligations, which include assistance in the realization of the rights of individuals under its jurisdiction, as well as of rights recognized by international treaties, together forming the independent international legal personality of the individual (Ignatenko, 1999: 33). The most significant manifestation of this status is the right to appeal to treaty bodies to protect the individual's rights and freedoms, in the exercise of which he or she enters the relations with a competent international body.

Attention should be paid when looking at the combination of international and domestic (constitutional) regulation of human rights standards regarding the status of the individual to the significant differences that are revealed when comparing the Constitution of the Russian Federation and various international legal acts. Perhaps the most notable gap in the Constitution is the absence in Chapter 2 of the provision which Article 11 of the 1966 International Covenant on Civil and Political Rights describes as "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions."

We can only assume that the lawmakers who drafted the Constitution proceeded from the realities of the time. A certain amount of flexibility is afforded in Article 2, Paragraph 1 of the Covenant concerning steps to achieve progressively the full realization of the rights recognized therein "to the maximum of its available resources." In this sense, the domestic implementation of the international standard that defines an adequate standard of living would not look so burdensome in the context of the constitutional goal to form and develop a welfare state. The absence of such a right is hardly consistent with Russia's international legal obligations.

Article 50, Part 1 of the Constitution of the Russian Federation states, "No one may be convicted twice for one and the same crime." This *non bis in idem* formula is embodied in Article 4 of Protocol 7 to the European Convention on Human Rights: "No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State."

20 Lukashuk I.I. 1996. *International Law. General Part: Textbook.* Moscow: Wolters Kluwer. P. 18.

This wording is clearly more substantial, and it is characteristic of conventions. Thus, assuming an agreed interpretation and application of these norms, we should proceed not only from the fact that an individual cannot be convicted for the same crime twice, but also from the fact that he or she cannot face trial a second time, even if they were initially acquitted.

The recognition of the direct application of international treaties and the generally recognized principles and norms of international law in domestic relations implies the interpretation of the rights and freedoms of man and citizen in accordance with international legal norms and standards, even in cases where there are no equivalents of such rights and freedoms in the Constitution and federal laws of the Russian Federation, or where Russian regulatory execution differs from the prescriptions of international law in terms of their content parameters.

In such situations, attempts to "separate" rights and freedoms into two enclosed spaces (the international legal space and the Russian legal space), each of which has its own subjective addressees, lead not only to the "bifurcation" of personal status, but also to the reduction of rights and freedoms secured at the international level to the unenviable role of declared categories that are devoid of any value. It is all but impossible to imagine rights that are legally recognized and formulated but are not subjective.

Conclusion

The notion of the priority of international law over domestic law is understandable and simple, as clear and obvious as the natural superiority of a general agreement over the whim of an individual. However, no matter how unsurprising and accessible this conclusion may seem, modern international law, while confidently stating its own priority, leaves the issue of the place of international legal norms in national legal systems at the mercy of the state (Chernichenko, 2018: 10; Bogdandi, 2008: 403; Crawford, 2012: 186–188). And the normative value of the supremacy of international law over domestic law proclaimed in national constitutions should not be overstated: in many civilized sates, even an ordinary law can legally and technically have greater force than an international obligation of the state (Ispolonov, 2017: 74–75). This is a matter of domestic law enforcement and a consistent interpretation of the norms of both legal systems. The bottom line is that the priority of one in no way means a refusal to recognize or implement the prescriptions of the other.

The case of Russia is a particularly stark example of this ambiguity. The idea of the priority of international law contained in the Constitution has undergone significant changes in order to narrow the scope for its enforcement. The selective amendments to the Constitution in order to adapt its provisions to the new practices have nevertheless failed to provide a definitive answer to the question of the mutual consistency of the provisions of the Constitution. This is the responsibility of the Constitutional Court.

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