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On the issue of a correlation of Russian and international financial law

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Abstract: The article is devoted to the settlement of the problem of preservation of the sovereignty of the Russian Federation, including a financial sphere - that is impossible without ensuring of supremacy of Constitution of the Russian Federation over norms of international law. In the article are analyzed the legal norms, scientific works and practical material, proving supremacy of Russian law over international law taking into account financial aspects. Scientific novelty of the article consists in development by the author of the clear logic formula of an averment of supremacy of Russian national law (including financial law) over international law, which is absent, including in the contemporary legal proposition of Constitutional Court of the Russian Federation (the position is, in our opinion, insufficiently convincing from international legal viewpoint) also it is based on in force legal norms as Constitution of the Russian Federation, and international law. Practical relevance of the article is fixed by possibility of use of the argument of the author`s article at an averment of supremacy of Russian national law over of international law in disputes of international legal character.

Key words: National law; International law; International financial law; Conventional principles and norms of international law; International treaty of the Russian Federation

1. Introduction

Saving sovereignty Russian Federation (hereinafter - RF), including the financial sector is not possible without ensuring the supremacy of the Constitution over international law. In this regard, it is necessary to analyze the legal norms, scientific works and practical material proving the supremacy of Russian law over international law, taking into account the financial aspects. In other words, the subject of study should be - the system of Russian legislation, financial, legal and other specialized literature, and practical material.

Therefore, it is necessary to develop a clear logical formula of proving the rule of the Russian national law (including financial law) over international law, which does not exist, including in the current legal position of the Constitutional Court of the Russian Federation (this position is, in our view, not convincing enough from a legal point of view) and this is based on the existing legal norms as the Russian Constitution and international law.

2. Review of the literature

In the legal science, there are many concepts of international law, which are analyzed in detail and classified in the works of different authors (Gavrilov, 1999; Müllerson, 1982).

The problem of the relationship between international law and national law complicates the lack of unity in the sense of international law, because of problems of its relation to the categories of "public international law" and "private international law". Some authors believe that international law and private international law - it is a single entity that is international law consisting of two parts: public international law and private international law. The rules of private international law are included in the system of international law in the broad sense (Ignatenko and Tiunov, 1999; Ushakov et al., 1990). Most are convinced that international law and private international law do not make a single unit (Lukashuk, 2005; Panov, 1997).

But at the same time, some authors believe that international law and private international law - are the independent systems, and private international law is polysystemic complex consisting of national law and international law (Gavrilov, 1999; Müllerson, 1982), while others believe that the international private law - is the part of national law and only international law - is the independent legal system (Lukashuk, 2005).

The above described problems are closely intertwined with the discussions in the formation of concepts of international financial law (Krokhina, 2010; Smirnikova, 2012; Petrova, 2005; Shumilov, 2005; Shapovalov, 2010).

And finally, all of the above cannot be justified without solving the problem of the relationship between international law and national (internal) law (Beloshapko, 2001; Voronin, 2013; Zapolskiy and Migachev, 2012).

3. Methods and materials

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The methodical base of work, constitute such research methods as logical, comparative legal, synthesis method, etc.

At the core of the article - there are the works of scientists on general and specific issues of international and national law (including financial), as well as their own author developments. Besides the Russian Constitution and Russian laws based on it are used in the article, as well as international treaties of the Russian Federation.

The empirical base of the study made by the practice of the Constitutional Court of the Russian Federation and international judicial institutions are used, Internet resources, and also publications in the Russian newspaper, which is the official (and therefore reliable) mass media in our country.

4. Results and discussions

We adhere to the position that the Russian domestic law have primacy over the international law, is the primary character.

According to paragraph 4 of Article 15 of the Constitution of Russian Federation, the generally recognized principles and norms of international law, international treaties of the Russian Federation are an integral part of its legal system. If in the international treaty of the Russian Federation established other rules than those provided for by law, then there used the rules of the international treaty. From the literal interpretation of the rule, we can draw the following conclusions: standards (principles) of international law, international treaties are applied in Russia not directly (i.e. directly), but only as part of its legal system.

In order to become part of the legal system of the Russian Federation, the norms and principles of international law should be generally accepted (that is recognized by Russia, too), and in that way they can only be under the condition of conformity to the Russia's national interests. For example, the 2nd Chapter Constitution of RF is devoted to the inalienable rights and freedoms of a man and citizen; because they are inalienable, violating the norms and principles of international law, international treaties of the Russian Federation cannot be used.

At the same the supremacy of law may not possess rules and principles of international law, and only international treaties of the Russian Federation, which are also due to come into effect, as otherwise they may be challenged in the Constitutional Court of the Russian Federation (RF Constitution of 1993, Art. 125). Finally, these agreements are governed by the Russian Federal Law “On international treaties of the Russian Federation” (Federal Law of the Russian Federation, 1995) and paragraph 2 of Article 4 of the Constitution of the Russian Federation in unequivocal and categorical terms, without reservations indicates that the Russian Constitution and federal laws have the rule on the entire territory the Russian Federation.

Different norms of the Russian Constitution are not applied in isolation from each other, but only in conjunction, i.e. paragraph 4 of Art 15 of the Constitution of the Russian Federation, cannot be taken out of the constitutional context. In addition, if the ratification of international treaties of the Russian Federation, the President has the right to veto in accordance p. 3 Art. 107 of the Russian Constitution.

Consequently, the right of Russia is the primary and have primacy over the international law and the application of norms, principles of international law and agreements authorized by Russia, i.e. they are not directly, but indirectly - through the Russian Constitution, which is the basis and source of all the Russian law, as well as by Russian federal constitutional and federal laws. In this context, the views of the individual authors of the primacy of international law over national law (Ilyin, 2002), we believe unacceptable, because of their direct contradictions in paragraph 2, Art 4 and paragraph 4 of Art 15 of the Russian Constitution.

It is the commitment of individual politicians, lawyers and scientists of the concept supremacy of the international law over the Russian national law, that led in 2010 to a legal conflict with the European Court of Human Rights (hereinafter - ECHR), which often makes decisions that are not based on international law (although this is the duty of the ECHR), but according to political expediency, with ostentatiously anti-Russian position (Gaganov, 2015). Too was in 2010, the ECtHR first time in a rigid legal form questioned the decision of the Constitutional Court on the dispute, having public character. In this regard, chairman of the court said that better knowledge of the national authorities of their society and its needs means that the power in principle takes priority position, in contrast to the international courts, to assess what is the public interest (Zorkin, 2010). The position set out for a long time was only the opinion, without proper clearance. The situation changed in December 2013 - when the Constitutional Court ruled in connection with the request of the Presidium of the Leningrad District Military Court. According to the official position of the Constitutional Court of the Russian Federation: the court of law, is obliged to obey only RF Constitution and federal law (RF Constitution, art. 120), and to resolve civil cases on the basis of the Russian Constitution, international treaties of the RF and the RF legislation, can come to a conclusion about impossibility of execution of the European Court of Human Rights judgment without rejection of the use of the RF legislation of the provisions previously recognized by the constitutional Court of the Russian Federation, did not violate the constitutional rights of the applicant in his particular case. In this case, the court of general jurisdiction is entitled to suspend the proceedings and address the Constitutional Court of the Russian Federation with a request to review the constitutionality of statutes (Decree of the Russian Federation Constitutional Court, 2013).

In 2015, the Constitutional Court of the Russian Federation continued to assert the supremacy of the

Russian Constitution, made the following legal position. As a legal democratic state, Russia, as a member of the international community, conclude international agreements and participate in interstate associations, giving them some of their powers (RF Constitution, 1993, Preamble, Article 15, Article 17, Article 79), which, however, does not mean the rejection of national sovereignty belonging to the foundations of the constitutional system and the alleged supremacy, independence and autonomy of state power, the fullness of legislative, executive and judicial power of the state over all its territory and independence in international relations, as well as being a necessary quality a sign of the Russian Federation, characterizing the constitutional and legal status. Based on this in a situation where the actual content of the ECHR judgment affected by the principles and norms of the Russian Constitution, Russia may, as an exception to withdraw from the implementation of the obligations imposed on it, when such derogation is the only possible way to avoid violations of the fundamental principles and norms of the Russian Constitution. This means that the decision of the authorized interstate body, including the decision of the ECHR cannot be fulfilled by the Russian Federation in the part imposed on it individual and general measures, if the interpretation of the standards of international agreement on which the award is based, violates the relevant provisions of the Constitution (Decision of the Constitutional Court, 2015).

As the most demonstrative our court cited the practice of the Federal Constitutional Court of the Federal Republic of Germany, basing on worked out by it the legal position with respect to a “limited legal powers of the European Court of Human Rights decisions”, namely: in the domestic legal order the Convention on the Protection of Human Rights and Fundamental Freedoms has a federal law status, along with ECHR practice serves only as a guide for interpretation in determining the content and scope of fundamental rights and principles of the Basic German Law, and only under the condition that this does not lead to the restriction or derogation of fundamental rights protected by the basic Law for the Federal Republic of Germany; ECHR decisions are not always are obligatory for execution by the courts of Germany, but also should not be ignored completely; National Justice should take into account these decisions appropriately and carefully adapt them to domestic law. At the same time, as suggested by the Federal Constitutional Court of Germany, a means of reaching an agreement with the ECHR - is the avoidance of conflicts between international and domestic law at the initial stage of the proceedings before a national court, which in principle should be kept to a minimum, since the two of the court using the same methodology. In all our cases, we are not talking about the contradiction between the Convention on the Protection of Human Rights and Fundamental Freedoms as such and national constitutions, but about the conflict of interpretation of the Convention's provisions of ECHR judgment in the particular case, and the provisions of national constitutions, including their interpretation by constitutional courts (or by other Supreme courts, endowed with similar powers). In assessing domestic legislation for compliance with the constitutions of their states, the national judicial authorities when making decisions based on what kind of interpretation, taking into account the balance of constitutionally protected values and international legal regulation of personal status, better protects human and civil rights in the legal system of the State, bearing in mind not only the right to seek protection, but also all those whose rights and freedom may be affected. (Decision of the Constitutional Court, 2015).

In this regard, our legislation was complemented by chapter XIII.1 «Consideration of cases of the possibility of execution of decisions of international bodies for the protection of human rights and freedoms", according to which the Constitutional Court received right to allow the possibility of execution of the decision of interstate body for the protection of human rights and freedoms with the point of view of the constitutional order of the Russian Federation established by the Constitution of the Russian Federation and the legal regulation of the rights and freedoms of man and citizen. (Federal Constitutional Law of the Russian Federation, 1994).

In 2015, Russian lawmakers have finally decided to limit, by federal law, the so-called jurisdictional sovereignty of a foreign state and its property on the territory of the Russian Federation. For the first time in relation to a foreign country were defined such concepts as a foreign country, the property of a foreign state, jurisdictional immunities of foreign States and their property, judicial immunity, immunity in respect of provisional or protective measures, immunity in respect of execution of court decisions, the Russian Federation, the court, the sovereign authority. Jurisdictional immunities of foreign States and their property to the extent provided in accordance to the named Federal Law, can be restricted on the basis of reciprocity, if it is determined the existence of restrictions on the provision of the Russian Federation and its property of jurisdictional immunities in a foreign State, in respect of which the property which arose the question of jurisdictional immunities. So, a foreign state does not use in legal cases in the Russian Federation judicial immunity in respect of property rights disputes, of compensation for damage, etc. (Federal Law of the Russian Federation, 2015).

If you read the full text of the above-mentioned decisions of the Constitutional Court, it may be noted that its legal position set out in a difficult-to-understand style, contain numerous reservations, logically reconciled. It is not acceptable, we believe the constant reference of the court to the international normative legal acts and also on legal precedents, formed courts of Western countries As a result, the corresponding changes in the Russian legislation also abound reservations, difficult to understand. This makes it possible to interpret that

the legal rules are not clear, but "politically correct", according to the "political situation".

We are convinced that the Constitutional Court of the Russian Federation (and not only it) is obliged to express an opinion briefly and logically, to defend their legal position solely on the Russian Constitution norms and federal laws. That is why we created the court.

Another example of international judicial institution, allowing a gross interference in the internal affairs of the Russian Federation, is the Permanent Court of Arbitration in The Hague in the summer of 2014 ordered Russia to pay 50 billion. Dollars. The United States for the expropriation of the assets of OJSC "Yukos Oil Company" (in connection with the violation of tax legislation), noting that Russia had violated the Energy Charter. And all this despite the fact that the claims of the former majority shareholders of OJSC "Yukos Oil Company" should not be considered an international judicial institution, as the dispute has internal Russian character. Finally, the Russian Federation has not ratified the Energy Charter Treaty, and Russia is not obliged to comply with it (Zykov, 2015).

The sharp drop of the role of international law is also evidenced by Ukrainian events. The so-called "international community" without a referendum supported the exclusion of Kosovo from Serbia. At the same time this "community" considers annexation fully consistent with international law, including the right to self-determination fixed in OSCE Helsinki Final Act and the UN Charter, the reunification of the Crimea and Sevastopol to Russia (Samozhnev, 2015). This is despite the carried out in the presence of international observers of the referendum and the signing of the 19 March 2014 Treaty between the Russian Federation and the Republic of Crimea on the adoption of the Russian Federation Republic of Crimea and the formation of the Russian Federation of new subjects (the Federal Constitutional Law of the Russian Federation, 2014). UN in such a situation was powerless.

Therefore, it is advisable for us to understand the international law in a broad sense and as international law with the Russian position. International law in the broadest sense is a special legal system governing relations between subjects of international law by the international legal norms. International law with the position of Russia is a special component of the Russian legal system, regulating the supremacy of the Constitution of the Russian Federation, relations between Russia and other subjects of international law by the international treaties of the Russian Federation, as well as principles and norms of international law recognized by Russia. Public international law - is a synonym of international law. Private international law can be understood in a broad sense as the International Private Law of Russia. Private international law in the broadest sense is a part of any national law with a foreign element. Private international law Russian is inter branch legal institute regulated by supremacy of the Constitution of the Russian civil, family, employment and other private relations in the Russian Federation with a foreign element.

International law also regulates the international (global) finance, by which we mean a set of public, international, social relations arising between States and other subjects of international law in connection with the formation, distribution, utilization of funds. We conclude that the international (global) financial law, while its concepts are a lot, (Beloshapko, 2001; Krokhina, 2010; Smirnikova, 2012; Petrova, 2005; Shumilov, 2005; Shapovalov, 2010) - is inter branch legal institute in the international system of law governing the relationship between the subjects of international law in the process of formation, distribution and use of funds.

A striking example of the optimal interaction of national law, international law and international finance law is the creation of the post-Soviet space, by Russia, Kazakhstan, Belarus, the Eurasian Economic Union - EAEU (Treaty on the Eurasian Economic Union, 2014). In October 2014 Armenia acceded to the EAEU (the Treaty of Accession of the Republic of Armenia to the Treaty on the Eurasian Economic Union, 2014), and in December 2014 Kyrgyzstan (the Treaty of Accession of the Kyrgyz Republic to the Treaty on the Eurasian Economic Union, 2014). The Union is the international organization of regional economic integration, which has international legal personality. The EAEU provides freedom of movement of goods, services, capital and labor, a coordinated, coherent and unified policy in the sectors of the economy.

Funding bodies of the Union activity is carried out at the expense of the Union budget, which is generated in Russian rubles at the expense of equity contributions from Member States. State- members develop and implement coordinated currency policy. Goods imported from the territory of one Member State into the territory of another Member State are subject to indirect taxes. In order to promote socio-economic development of the member states, attraction of investments, creation and development of industries based on new technologies, the development of transport infrastructure, tourism and health resort areas, as well as for other purposes on the territory of the Member States are established and function free (special) economic zones and free warehouses.

The Union provides the creation of conditions for the mutual recognition of licenses in the banking and insurance sectors, as well as in the services sector in the securities market issued by the competent authorities of one Member State, on the territory of other Member States; definition of requirements for the banking, insurance activities and activities in the securities market (prudential requirements); exchange of information, including the confidential information between the competent authorities on regulatory issues of the Member States and the development of banking activities, insurance activities and activities in the securities market, control and supervision in accordance with an

international agreement within the Union; holding the mutual consultations on regulation of banking activities insurance activities and activities in the securities market by competent authorities of the Member States.

At the end of this article it is worth noting that the President of Russia in 2015 in his decree approved new National Security Strategy (Presidential Decree 2015), according to which (assuming the continuity of the previous strategy, 2009) the main strategic risks and threats to national security in the economic sphere in the long term are to save raw materials export, development of the national economy, decreasing of the competitiveness and the high dependence of its major areas of foreign economic conditions, loss of control over national resources, the deterioration of the raw material base of industry and energy, the uneven development of regions and progressive labor insufficiency, low stability and security-in the national financial system, preserving the conditions for corruption and criminalization of housekeeping financial relations, as well as illegal migration.

5. Concluding provisions

The right of Russia has primarily the primacy over international law and application of the norms, principles and agreements of international law authorized by Russia, i.e. they do not act directly, but indirectly - through the Russian Constitution (which is the basis and the source of all the Russian law), as well as by Russian federal constitutional and federal laws. It is necessary for Russia in connection with all the above said and in the existing conditions and prospective western restrictive measures: a) literally interpreted Articles 4 and 15 of the Constitution, i.e. do not expose to any doubt and the reservations supremacy of national law over international law; b) withdraw from the UN and set up its counterpart - the Russian international organization "multipolar world" with the location in St. Petersburg; c) to withdraw from the Council of Europe and all the other European institutions, because we can create the corresponding structure on the basis of the Eurasian Economic Union; g) to maintain mutually beneficial financial and economic relations, with all the foreign states without exception .

It is not necessary for Russia enters into international organizations by the will of Western, but it would be better the near and far abroad countries to join the Russian international (including financial and economic) organizations, or interact with them. This Constitutional Court is able to more expertly resolve related disputes than the European Court of Human Rights in Strasbourg. And so on.

Only in this case, Russia will retain its sovereignty and the role of a world power; strengthen its legal system, thus achieving the stability, including the economy and finance.

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