CIVIL LEGISLATION AND THE RULES OF INTERNATIONAL LAW

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Abstract. This paper deals with a legal analysis of the correlation between international rules and civil legislation of Russia. The author considers the peculiarity of the enforcement of the rules of international law and the international treaty in the Russian Federation, as well as the possibility of recognizing the supremacy of the Basic Law - the Constitution over the international legal rules, implemented in the national legislation of the Russian Federation.

Keywords: international law, civil law, the United Nations, the European Union, imperative rules, the Constitutional Court, the European Court of Human Rights.

Introduction. The rules of international law, regulated by national legislation, have long been part of the Russian system of law, since they were first recognized in the Constitution of the Russian Federation (in 1993), and in the Civil Code of the Russian Federation (in 1994). The question of the place of principles and rules of international law in the system of Russian legislation, including civil law, continues to be controversial. A lot of debates arose on this basis. Some authors, such as Iu.A. Tikhomirov, believe that "... the problem of the correlation between international and domestic law is "attributed" to the sphere of the science of international law. At the same time, an almost complete absence of this topic in the series of works on the theory of law and the state, as well as poor attention of branch legal sciences to it disappoints. While the greatness of the "outer shadow" is only silently acknowledged, and still there is no new trends in the world development of law, convergence, a kind of intertwining of its various facets behind it, whereas the systemic understanding of Part 4 Art. 15 of the Constitution persistently dictates the need to modernize the view on this problem" [4], in contrast to most countries of Western Europe, where the issue in question has long been resolved in favor of international agreements because of the participation of countries in the European Communities and the European Union [10, 15]. For example, clause 1 Art. 28 of the Constitution of Greece states that "the generally recognized rules of international law, as well as international treaties, from the moment of their authorization through the law and entry into force, in accordance with the provisions of the treaty itself, are part of the national law of Greece and have precedence over laws that contradict them" [16].

Methodology. The methodological basis of the paper is general scientific and special methods. General scientific methods used are: dialectical, logical methods, analysis and synthesis, induction and deduction, etc. Among the private scientific methods of cognition used are: formal-legal, comparative legal, and system-structural.

Discussion and results. Currently, the Civil Code proclaims the superiority of international law over domestic rules; Part 2 Art. 7 of the Civil Code of the Russian Federation regulates that "If the international treaty of the Russian Federation establishes other rules than those provided for by civil law, the rules of the international treaty shall be applied." This rule is typical for EU countries [18].

Commenting on this provision of civil legislation, V.V. Piliaeva asserts that "international legal principles, rules and treaties in the legal system of the Russian Federation operate autonomously. The source of these rules is the UN Charter, the declaration and resolution of the UN General Assembly, the decisions of the International Court of Justice, and the decisions of other universal international organizations" [5]. In theory, one can adhere to this position, but in practice many questions arise. For example, the rules of enforcement, legal force, place in the system of domestic legal regulators of universally recognized principles and rules of international law. The unresolved nature of these issues and the absence of a "modernized" view of the place of universally recognized principles and rules in Russian law have led to the fact that domestic law enforcers either refuse to use international principles and rules when dealing with civil cases or use them with serious errors.

Rules for resolving conflicts between the rules of domestic Russian law and generally recognized principles and rules of international law by the RF Constitution are not established. Some scholars believe that a conflict between the Constitution of the Russian Federation and these rules should be resolved in favor of the Constitution, since according to Art. 15 of the Constitution of the Russian Federation, "universally recognized principles and rules of international law and international treaties of the Russian Federation are an integral part of its legal system, within the framework of which no acts exist that are superior to the RF Constitution by their legal force" [6].

Part 3 Art. 5 of the Federal Constitutional Law "On the Judicial System of the Russian Federation" stipulates that "the court, having established in the proceedings the inconsistency of the act of a state or other body, as well as an official of the Constitution of the Russian Federation, federal constitutional law, federal law, generally recognized principles and norms of international law, takes a decision in accordance with the legal provisions of the greatest legal force" [2]. This formulation states that the legislator has approved exactly such a hierarchy of these sources of law, although he does not directly say so.

However, returning to the analyzed Article 15 of the Constitution of the Russian Federation, one cannot but note the fact that "if the rules of the international treaty contradict Russian law, then the rules of the international treaty are applied" [1].

S.V. Chernichenko argues that "the basic principles of international law are on a higher level in the hierarchy of legal sources by legal force. And in the event of a mismatch with the rules established by Russian laws, these principles must be a priority" [7].

In relation to Russian regulations, all universally recognized principles and rules of international law should have priority.

The necessity of the priority of universally recognized principles and rules of international law is conditioned by objective laws of the development of law at the present stage, by close interaction of international and internal law, and by the processes of globalization that entail "internationalization and homogenization of law".

At the present time, the question of the possibility of public authorities to apply treaty rules in case without any mention of a contradiction with national law remains open. Is the international treaty a priority only in case of conflicts or are there cases when the contractual rules are applied as a matter of priority?

The problems of the implementation of the legal rules discussed above arose from the fact that clause 4 Art. 15 of the supreme law of the Russian Federation, not only puts the Convention in the rank of an integral part of the legal system, but also provides for its supremacy over the laws of the Russian Federation [11]. However, in accordance with clause 1 Art. 15, the Constitution of the Russian Federation takes precedence in the territory of the Russian Federation, which means that the Convention, by its action, stands in the general hierarchy after the Basic Law [13]. While the place of the ratified international treaties in the legal system of the Russian Federation is still controversial and has not yet found a universally recognized answer in theory. Nevertheless, it is noted that clause 4 Art. 15 of the RF Constitution was created, first of all, to prevent the principles of *lex posterior derogat legi priori* and *lex specialis derogat legi generali* in relation to the international rules of law [12]. In the context of the foregoing, we should mention the Decree of the Constitutional Court of the Russian Federation No.21-P of July 14, 2015, which recognized the supremacy of the Constitution of the Russian Federation in the execution of the decisions of the European Court of Human Rights [14].

In civil relations, complicated by a foreign element, otherwise, international treaties are concluded aimed at regulating this particular group of relations; clause 1, Art. 1186 of the Civil Code of the Russian Federation regulates also that if the international treaty of the Russian Federation contains substantive law applicable to a civil relationship complicated by a foreign element, then the question of choosing the applicable law shall be withdrawn.

Thus, Art. 1186 of the Civil Code of the Russian Federation obliges the national law enforcer to be guided in the first instance by the provisions of the international treaty of the Russian Federation when dealing with a foreign element. National legislation, before referring to the provisions of internal law, obliges to establish whether there is an international treaty that would regulate relations with a foreign element. These are international treaties that contain uniform substantive rules. The existence of such an international treaty, as a rule, excludes the need to apply national legislation.

Consequently, first of all the international treaty of the Russian Federation, and only in case of its absence - the rules of national legislation are applied, on the basis of which the applicable law will be determined.

It seems also possible to talk about the priority application of an international treaty in such situation. It should be noted that in this case the advantage is given to the provisions of the treaty in the absence of conflicts with national laws. The basis for this priority is the indication of the law (Art. 1186 of the Civil Code), which is due to the specifics of civil relations, complicated by a foreign element.

B.L. Zimnenko notes that "if the subject of legal proceeding is relations with a foreign element, the court is obliged to refer to the content of international treaties in almost every such case; in this case international treaties may both contain other rules (in the sense of conflict) not provided for by law, and complement the existing Russian legislation" [8].

The necessity of the priority of universally recognized principles and rules of international law is conditioned by objective laws of the development of law at the present stage, by close interaction of international and internal law, and by the processes of globalization that entail "internationalization and homogenization of law" [9].

Summary. International globalization processes require the convergence of the legal systems of states; the priority of universally recognized principles and norms of international law over domestic law is one of the most important conditions for the correspondence of national legal systems to each other. Such a priority is possible when considering civil law relations with the participation of foreign citizens. I.e. an analogy with "Community law" is suggested [17]. However, considering the current international situation, to which the Russian Federation is a party, going beyond the limits of private law relations, the necessity of protective measures from the above integration process is assumed. And these measures are taken at the level of the Constitutional Court of Russia.

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INSTITUTION OF NEIGHBORING RIGHTS IN CIVIL LEGISLATION OF POST-SOVIET COUNTRIES

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Abstract. The authors consider in this paper the emergence and development of neighboring rights in some countries of Europe and the CIS countries. The main features of neighboring rights are singled out and grounded, ways of protecting neighboring rights are analyzed. Gaps in the legal regulation of neighboring rights were identified and a conclusion was drawn on the need to introduce this legal institution into Russian civil law.
Keywords: neighboring rights, restriction on the right of ownership, real estate, land plots, exploitation effect, limits of permissible impact, legislation of the CIS countries.

Introduction. Since the emergence of private ownership of real estate objects that are in physical contact with each other in space or are affected by the exploitation effect of a certain object, the need arose to regulate the relationship between the owners and proprietors of these objects.

The first source of legal regulation of neighboring relations was customs. In particular, the laws of the XII tables in the Roman law established the rules of law for the first time, limiting the rights of the owner to his/her the property. Roman lawyers called "neighborhood" as "vicinitas": this concept included a number of legal relations that arose between the owners of neighboring real estate, as well as the possibility to protect these legal relations by certain legal means [1]. However, there was no clear delineation between the neighboring law and easements [2].

The rules of the neighboring law are known to the legislation of many foreign states and fall under the category of restrictions on property rights by virtue of the law in favor of neighbors. According to the German Civil Code [3], neighbors can interact with each other in one of three ways: not to exert any influence on the neighboring land plot; insignificantly influence; influence significantly, but within the framework of the usual use of a land plot for a given locality. There is a legally set ban on negative impact, i.e. impact that violates the principle of reasonableness, the types and parameters of permissible and unacceptable use of the land plot, the properties of a particular land plot. Article 976 of the Civil Code of Quebec, which although refers only to land plots, expresses a general idea applicable to all neighborhood relations. In accordance with this Article, "neighbors should tolerate the usual inconveniences caused by