

RELATIONSHIP OF THE CONSTITUTION OF THE RUSSIAN FEDERATION AND INTERNATIONAL LAW

Victor Yu. Melnikov

*Doctor of Laws. Professor of the Department of Criminal Procedure and Criminalistics
Rostov Institute (branch) VGUYUA (RPA of the Ministry of Justice of Russia)
Russian Federation*

Valery K. Tsechoyev

*Doctor of Laws. Professor of the Department of theory and history of state and law
Rostov branch «Russian state University of justice» (Rostov-on-don)*

Andrei V. Seregin

*Associate Professor, Department of theory and history of state and law,
Southern Federal University, Russian Federation*

Kirill A. Dolgopolov

*candidate of legal Sciences, associate Professor of the Department of criminal law and criminology
Rostov Institute (branch) of the all-Russian State University of justice (RPA Ministry of justice of Russia)*

Anton A. Vasilyev

Doctor of Laws. Head of the Department of theory and history of state and law, Altai state University

Olga V. Akhrameeva

*candidate of Law Sciences, docent of department of civil law and process
Federal State autonomous institution of the higher education «North Caucasian Federal University»*

Abstract. The concept of «sovereignty» is taken to be interpreted as a property of state power to be independent of any other authority, both within the state and outside it, i.e. have absolute legal supremacy. In essence, the sovereignty of the state is the sovereignty of its elite, the so-called political class that controls ownership of natural resources, capital and a system of bureaucratic management. It is important to bear in mind that recognizing the generally recognized principles and norms of international law and international treaties as an integral part of the legal system of the Russian Federation, the Constitution of the Russian Federation, as well as federal legislation and legislation of the constituent entities of the Russian Federation, does not disclose the notion of a legal system that is ambiguously defined in the scientific world. States have the right, in accordance with the principle of not interfering in the internal affairs of the state, independently, without outside interference and any pressure, to establish their political, economic systems, dispose of natural resources, develop them independently or concessionally, impose taxes and other charges, establish customs rules, regime of stay of foreigners on its territory.

Key words: State, society, sovereignty, norms of international law, international legal custom, human rights and freedoms

1. Introduction. A sign of sovereignty is also the lack of responsibility of its carrier, to anyone else, as well as the possibility of establishing a state of emergency. «In other words, the one who establishes the norms must be competent to change and violate them, without this there is no real independence, full sovereignty, there is no supremacy and will not be» [1, p. 13]. Moreover, a sovereign state can suspend the operation of a right by virtue of its right to self-preservation. The state is, until then, really a state, as long as it effectively suppresses all competing forces in internal affairs, and in the external - claims itself as an equal competitor. (sovereignty), impose their will upon them. The result and logical development of the denial of the idea of the sovereignty of the state, or its limitation is the basis «for the indulgence of the aggressors who try to present themselves as defenders of the common interests of the entire population of the globe» [2, p. 6].

2. Method. Methodological basis of this study is the dialectical method of cognition of social and legal phenomena and concepts in their development and interdependence. In the process, general-purpose and scientific methods of scientific knowledge are used as well, historical and legal, systemic, structural-functional, comparative legal, statistical, sociological, specifically the formal-logical, logical-legal and others. The legal framework and information base includes the research of international legal instruments, scientific sources, investigative and judicial practices to ensure the rights and lawful interests of individuals in the pre-trial proceedings.

3. Results. The basic law of the Russian state theoretically contradicts the notion of sovereignty. On the one hand, Part 1 of Art. 3 of the Constitution of the Russian Federation says that "the carrier of sovereignty and the only source of power in the Russian Federation is its multinational people", and on the other in Part 4 of Art. 15 refutes the above, considering the universally recognized principles and norms of international law and international treaties of the Russian Federation as an integral part of its legal system, fixing the supreme legal force in relation to national law behind them. Consequently, the Russian people do not own the supreme authority on their territory. In accordance with Federal Law No. 54-FZ of March 30, 1998 [3], Russia recognized and ratified the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, according to which the Russian Federation recognized the

jurisdiction of the European Court of Human Rights as binding on questions of interpretation and application [4]. Thus, the decisions of the European Court of Human Rights became part of the legal system of Russia, namely: its pointing superstructure. In order to ensure the correct and uniform application by the courts of international law in the administration of justice, the Resolution of the Plenum of the Supreme Court of the Russian Federation of October 10, 2003 No. 5 "On the application by general courts of universally recognized principles and norms of international law and international treaties of the Russian Federation" [5] the mandatory for all public authorities of the Russian Federation, including for the courts, the jurisdiction of the European Court of Human Rights.

According to the Chairman of the Constitutional Court of the Russian Federation V.D. Zorkina, «there is a clearly abnormal hypertrophied tendency when the supranational legal system - the European Court increasingly replaces the Russian legal system. There is already a problem of sovereignty of our state» [6, p.1]. On July 14, 2015, the Constitutional Court of Russia adopted Resolution No. 21-P "On the Verification of the Constitutionality of the Provisions of Article 1 of the Federal Law" On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols ", paragraphs 1 and 2 of Article 32 of the Federal Law "On the international treaties of the Russian Federation", parts 1 and 4 of Article 11, paragraph 4 of the fourth part of Article 392 of the Code of Civil Procedure of the Russian Federation, Parts 1 and 4 of Article 13, paragraph 4 of Part 3 of Article 311 of the Russian Code of Arbitration Procedure the Russian Federation, Part 1 and 4 of Article 15, paragraph 4 of Part 1 of Article 350 of the Code of Administrative Procedure of the Russian Federation and Clause 2 of Part 4 of Article 413 of the Code of Criminal Procedure of the Russian Federation in connection with the request of a group of deputies of the State Duma " as an exception, may depart from the fulfillment of international obligations imposed on it, if such a derogation is the only possible way to avoid violating the fundamental constitutional principles.

In the development of this legal position on December 14, 2015, FKZ-No.7 «On Amending the Federal Constitutional Law» On the Constitutional Court "of the Russian Federation" was adopted, in which, in Art. 104.1. provides for the case where "the Federal executive authority, which has competence in the sphere of providing protection for the interests of the Russian Federation when considering complaints filed against the Russian Federation on the basis of an international treaty of the Russian Federation in the intergovernmental body for the protection of human rights and freedoms, on the basis of the conclusion of federal state bodies , who are charged with the duty within their competence to take measures to implement the decisions of the interstate gan on the protection of human rights and freedoms, or, if the said federal executive body is itself the body entrusted with this duty, on the basis of its own conclusion that it is impossible to enforce a judgment against the Russian Federation on the basis of an international treaty of the Russian Federation, a decision of an interstate body for the protection of human rights and freedoms due to the fact that in the part that obliges the Russian Federation to take enforcement measures, this decision is based on the provision and on the basis of paragraph 2) of Art. 104.4 on the basis of the consideration of the case, the Constitutional Court of the Russian Federation may adopt a resolution on the impossibility of exercising in whole or in part in accordance with the Constitution of the Russian Federation the decision of the intergovernmental body for the protection of human rights and freedoms, adopted on the basis of the provisions of the international treaty of the Russian Federation in their interpretation by the interstate body for protection of human rights and freedoms, in connection with which a request was submitted to the Constitutional Court of the Russian Federation.

This is a significant, but not the final step in the struggle for the de facto and legal sovereignty of the Russian Federation. Unlike Russia, the United States has never recognized the priority of international law in relation to the norms of its own constitution and the national legal system. So, in 1889 the Supreme Court of the USA ruled on Chinese immigrants who, in particular, found that the Constitution does not prevent the Congress from issuing laws that contradict the state's international obligations, and the courts are obliged to apply a law of parliament incompatible with the provisions of a previously concluded international treaty [7, p.47]. In the Havana Packet case of 1900, the Supreme Court extended this provision to acts of the President. According to the decision, the US courts must apply international law, if there is no act of executive power on this issue. In 1986, the county, and then the US Court of Appeals, examining the Garcia-Mir vs. Mis case, extended this provision to acts of the Attorney-General. It is worth mentioning that the Basic Law of Belarus contains more precise guarantees of state sovereignty, Part 3. Art. 8 of the Constitution of the Republic of Belarus, indicates the inadmissibility of concluding international treaties contrary to the Constitution.

For example, «the legal system» notes VA. Agafonov, can be considered in the static aspect, i.e. from the point of view of its structure and composition (which combines its main sides - legal consciousness, official law and the rule of law), and in a dynamic aspect, from the point of view of functioning and evolution of the system as a whole (its functions - reformatory, protective-stabilization, communicative, cultural , educational) and its individual elements "[8, p. 237]. From the point of view of VN. Sinyukova and F.A. Grigorieva, the legal system is understood as «a social organization that includes the main components of the national legal culture: law and legislation, legal practice and legal ideology (doctrine)» [9, p. 3].

In a broad sense, the notion of a legal system includes the following elements:

- 1) the right as an aggregate of norms created and protected by the state;
- 2) legislation as a form of expression of these norms (normative legal acts);
- 3) legal institutions implementing the legal policy of the state;
- 4) judicial and other legal practice;
- 5) the mechanism of legal regulation;

6) legal implementation process (including acts of application and interpretation);
 7) rights, freedoms and duties of citizens (law in the subjective sense);
 8) the system of legal relationships that develop and function in the society;
 9) legality and law and order;
 10) legal consciousness;
 11) subjects of law (individual and collective) that organize and bring the entire legal mechanism into action;
 12) systematizing links that ensure the unity, integrity and stability of the system;
 13) other legal phenomena (legal responsibility, legal personality, legal status, legitimate interests, etc.). An active role is played by legal facts that ensure its connection with real life relations [10, p.9-10].

Proceeding from this, the doctrines of the most qualified specialists in public law of different nations on the territory of Russia can be supremacy, which are referred to in d. Part 1 of article 1 as a source of international law. 38 of the Statute of the International Court of Justice.

Even more absurd is the recognition of universally recognized principles of international law as a source of domestic law, which has a primacy in relation to national legislation. This is due to the fact that in international law the understanding of principles by different states is not only unambiguous, but also very «vague». Thus, in making its decisions, the International Court of Justice, in accordance with cl. 38 of the Statute of the International Court of Justice applies the general principles of law recognized by civilized nations. The question arises: «Which nations are uncivilized?». There is no such list.

In addition, the content of the principles of international law, enshrined in the Charter of the United Nations in 1945 is quite contradictory:

- the principle of sovereign equality (Clause 1, Clause 2) is inconsistent with the fact that out of the 15 members of the Security Council, five are permanent (Russia, China, France, Great Britain, the United States), and the latter have the right of veto (Clause 3, Article 27);
- the principle of equal rights and self-determination of peoples (paragraph 2 of Article 1) is refuted by the principle of territorial integrity and inviolability of borders (for example, on the basis of Articles III and IV of the Final Act of the Conference on Security and Cooperation in Europe of August 1, 1975, European states and their integrity were recognized as inviolable, therefore, Russia, as the legal successor to the USSR, has the right to demand restoration of its territorial integrity within the state borders of the USSR at the time of 1991);
- the principle of not interfering in the internal affairs of the state (paragraph 7 of Article 2) is often blocked by the principle of respect for human rights and freedoms (Article 3 § 3);
- the principle of non-use of force and threat of force (Article 3, paragraphs 3 and 4) does not apply to individual and collective self-defense of the state (Article 51), which can be interpreted until a preventive strike against a potential aggressor, etc.

The UN Charter formulated in writing only part of the principle of not interfering in the internal affairs of the state (Article 7, Clause 7) concerning non-interference of the international organization in matters "essentially falling within the internal competence of the state", leaving a substantial part of it - relations between the states themselves in the form of custom.

4. Discussion. In full formulation, the principle exists in a normally legal form. The understanding and tendencies of the development of the principle are seen in the treaties of the states on various objects of cooperation, as well as in moral and political norms in the form of resolutions and declarations, for example, the Declaration of the UN General Assembly on the Inadmissibility of Intervention and Interference in the Internal Affairs of the States of 1982. The Principle is designed to protect the internal function a state that represents one of the aspects of full and sovereign power exercised by it on its territory and within its borders.

The duties of the state within this principle are not to interfere in the internal affairs of another state, such as establishing a form of government, holding referenda and plebiscites, passing laws, spending loans, etc. States are obliged to refrain from actions that can be considered undue pressure to obtain special rights and benefits. This may be financial pressure, a promise to grant privileges on the condition of granting loans, lending, but under the condition of buying the products of the creditor state, ceding territory, etc. Interference in the internal affairs is also considered broadcasting to the territory of the state without his consent. But the world powers, in order to ensure their own security, use, above listed, ways of influencing other states [11, p. 84].

It should be specially emphasized that the Declaration on the Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations of October 24, 1970 is of a recommendatory nature [12, p. 17].

Absolutely absurd from the point of common sense, but the content of Part 3. Art. 1 of the Code of Criminal Procedure of December 18, 2001 No. 174-FZ that «The generally recognized principles and norms of international law and international treaties of the Russian Federation are an integral part of the legislation of the Russian Federation regulating criminal proceedings».

Therefore, foreign countries, determining the correlation of international and national law, in order not to create theoretical and legal problems in the application of specific legal norms, usually do not use the terms «generally recognized principles of international law» and «legal system». For example, in Art. 25 of the Basic Law of the Federal Republic of Germany of 1949 states that «The universally recognized norms of international law are an integral part of

the law of the Federation»; Art. 10 of the Italian Constitution of 1947 points out that «Italian law and order is consistent with universally recognized norms of international law»; Part 1 of Art. 91 of the Federal Constitutional Law of the Republic of Austria determines that «Generally recognized norms of international law act as an integral part of federal law»; Part 2 of Art. 2 of the Greek Constitution of 1975 declares: «Greece, following the universally recognized norms of international law, strive to strengthen peace, justice, and the development of friendly relations between peoples and states»; Part 1 of Art. Article 96 of the Spanish Constitution of 1978 prescribes: "International treaties concluded in accordance with established requirements become after their publication in Spain an integral part of domestic legislation. Their provisions can be revoked, amended or suspended only in the manner established in the treaties themselves or in accordance with generally recognized norms of international law "; but more diplomatically and successfully, about this issue says part 2 of Art. 98 of the Japanese Constitution of 1946: "The treaties concluded by Japan and the established norms of international law must be faithfully observed".

The source of international law can be custom (see: p. B) art. 38 of the Statute of the International Court of Justice), but Part 2 of Art. 5 of the Civil Code of 1994 (as amended by Federal Law No. 302-FZ of December 30, 2012) establishes that "customs that contradict the provisions of the legislation or contract binding for the parties to the relevant relationship do not apply." The legal science of different states differently assesses the significance and understanding of custom as a form and source of law.

According to G.F. Shershynovich, the legal custom must meet the following requirements:

- a) contain rules that are based on legal conviction and are manifested in more or less frequent application;
- b) does not contradict reasonableness;
- c) not to violate good morals;
- d) not to have at its base delusions [13, p. 440].

On the existence of a legal custom, one can speak only when "in the basis of a monotonically repeated norm lies legal consciousness or popular belief" [13, p. 440].

From the point of view of the English jurist N. Salmond, the legal custom must be, first of all, reasonable; not to contradict statutory law (laws); be established "as if by right," without the use of power tools and must have the character of an old custom, existed from "time immemorial" [14, p.199]. At the same time, the "reasonableness" of the legal custom in some cases is associated with the fact of participation in the process of its application by jurors. In others (in case of non-participation of the latter in the case) - with the fact of consideration of cases by several judges or even by one judge. As for the requirement "to exist from time immemorial," the custom that has existed since 1189 is regarded as such in Great Britain. This year is the year of the ascent to the English throne of King Richard the First (Richard the Lionheart). According to the Westminster Statute of 1275, operating in the territory of Great Britain and now, 1189 is considered as the date with which the concept "from time immemorial" is associated. In litigation, a party referring to an ancient custom must provide evidence that it is such. But since this is far from always easy and simple, the English court, according to observers, refers to this with understanding. In practice, he does not insist on giving him absolute (positive) evidence that the custom goes back to 1189 [15, p. 235]. Often, the court is satisfied with that, especially when considering cases "tied" to a particular locality, which establishes the existence of the sought-after custom throughout the life of the oldest resident of the locality. Proceeding from this, the court presumes that the custom in use dates back to 1189, that is, exists from "time immemorial". And already by virtue of this, it must be regarded as a source of law, as a legal custom. In the opinion of the French jurist M. Oriou, a non-applicable requirement that a legal custom must meet is the requirement that it "be the result of the functioning of a particular national institution" and act within the framework of "procedures peculiar to the whole national life" [16, p. 138]. If all this does not happen, then, as the author concludes, such customs and traditions "can not be invoked before a judge, even in those countries that in principle allow the authority of custom."

The custom as a source of Anglo-Saxon law can not be invoked and in all those cases, if there are "deviations" from them and from other established in the general law fairly rigid to them requirements - canons. Among them, it is necessary to emphasize such as the requirement that the custom: a) in the process of its permanent or periodic use never be interrupted in a lawful manner; b) applied only peacefully, openly and correctly; c) was quite definite in its essence and content; d) organically "fit" or at least agreed (not contradicted) with other customs; e) must be limited to a certain sphere of activity and territory, and also subject to its regulatory influence; e) should be organically combined with the existing norms of law and not be in conflict (not to contradict) neither statutory nor with general law; g) must be recognized, respected and respected by the people of the territory on which it acts as a legal custom. In all cases where the basic requirements - the conditions imposed as criteria for legal customs - are not only declared but also respected, local customs always have a chance to be considered by courts as constituent parts of law. Moreover - to have a certain advantage as "ancient", the previously arisen institutions of customary law in front of many other legal acts or institutions of law that appeared in a later period.

In accordance with Part 1 of Art. 5 of the 1994 Civil Code of the Russian Federation "custom recognizes the established and widely applied in any area of entrepreneurial or other activity, the rule of conduct not provided by law, regardless of whether it is fixed in any document". The above definition contains an appraisal category "widely applied," the interpretation of which is not defined by either a temporal or a territorial framework, which makes it difficult to unify the definition of custom in judicial practice.

The law-enforcer and the legislator are obliged to see in legal customs the natural historical process of development and development of authorized forms of law in which state interest is present, as they are supported and protected by the entire force of public authority.

6. Conclusion. Thus, the international legal custom should be understood as objectively formed as a result of repeated repetition of the rule of social behavior, based on considerations of its expediency and usefulness, which is recognized by specific states and other subjects of international legal relations. Unlike other sources of international law, the legal custom is less formalized and provides much more free discretion to the parties, and harmonization of individual wills. Therefore, the usual rules are more dispositive than contractual ones. In this case, it is not clear why the rules of international customs should have a higher legal force than the normative legal acts of the Russian Federation.

The legal infringement of the sovereign rights of an independent state is more stringent than in the Basic Law of Russia recorded in the Constitution of the Portuguese Republic of 1976:

"Article 8. International law

1. The norms and principles of general or customary international law are an integral part of Portuguese law.

2. Norms of international treaties ratified or duly approved shall enter into force after official publication and their implementation becomes mandatory for the Portuguese state

3. The norms coming from the competent bodies of the international organizations in which Portugal is made operate directly in domestic law, as it is established in the relevant constituent treaties. "

But, Russia is not Portugal, it can not renounce sovereignty; from its independent state building and legal life. The Russian synonym of sovereignty is the term "autocracy", which can be popular, monarchical or mixed (zemsky).

The perfect relationship between the constitutional terms "sovereignty" and "independence" is not clear [17, p. 48-50]. In the legal theory, "sovereignty" is defined as the quality of "independence" of state power, nor from any other authority, both inside the state and outside it, ie, the ability to have absolute legal supremacy. But in part 2 of Art. 80 of the Constitution of the Russian Federation states that "The President of the Russian Federation is the guarantor of the Constitution of the Russian Federation, of the rights and freedoms of man and citizen. In accordance with the procedure established by the Constitution of the Russian Federation, it takes measures to protect the sovereignty of the Russian Federation, its independence and state integrity, ensures the coordinated functioning and interaction of public authorities, "and, swearing in accordance with Part 1. Art. 82 of the basic law, the head of state swears "to defend the sovereignty and independence" of Russia. Even more this question was confused by the Constitutional Court of the Russian Federation, which fixed in clause 2.1 of Decree No. 10-P [18] of June 7, 2000, the provision that sovereignty presupposes the supremacy, independence and independence of state power, the completeness of the legislative, executive and judicial power state on its territory and independence in international communication. Thus, the Constitutional Court of the Russian Federation on the one hand confirmed that the category "sovereignty" absorbed the category "independence", but on the other hand it turned out that the definition of "independence" is not equivalent to the definition of "independence." Proceeding from the above, the Russian Federation must unequivocally fix the primacy of the national constitutional law over the norms of international law.

7. Conflict of interest. The author confirms that the data do not contain any conflict of interest.

References

- Ivanov V.V. To criticism of the modern theory of the state. - M., 2008. P. 13.
- Krylov B.S. State sovereignty: modern problems. // Constitutional and municipal law. 2008. № 6. With. 6.
- Federal Law of March 30, 1998 No. 54-FZ On the Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols. // SZ RF. 1998. № 14. Art. 1514.
- Meeting of the Legislation of the Russian Federation, 1998.? 20. Art. 2143.
- Resolution of the Plenum of the Supreme Court of the Russian Federation of 10 October 2003 No. 5 "On the application by general courts of universally recognized principles and norms of international law and international treaties of the Russian Federation" // Rossiyskaya Gazeta. 2003. December 2. No. 244.
- Zorkin V.D. Judicial protection: between globalization and sovereignty. // Russian newspaper. 2007. On the 18th of July. No. 153. C. 1.
- Zamora-Lobato, T., Garcia-Santillan, A., Moreno-García, E., Lopez-Morales, J. S., & Ramos-Hernandez, J. (2017). High School Students and their Perception of Financial Institutions: An Empirical Study in Xalapa, Veracruz. *International Electronic Journal of Mathematics Education*, 12(2), 133-143..
- Agafonov V.A. Features of the legal system of the Russian Federation: theory. - Rostov-on-Don, 2007. P. 237.
- López, Daniel A., Oscar Espinoza, and Silvia J. Sarzoza. "Aplicación de políticas de aseguramiento de la calidad en programas doctorales." *Opción* 34.86 (2018): 71-102.
- Seregin A.V. Legal comparativistics (a course of comparative jurisprudence for masters): a tutorial. - M., 2016. S. 9 - 10.
- International Public Law: Textbook. / L.P. Anufrieva, D.K. Bekiashev, K.A. Bekiashev, V.V. Ustinov [and others]; otv. Ed. K.A. Bekiashev. - 4 th ed., Pererab. and additional. - M., 2007. P. 84.

12. Declaration on the principles of international law concerning friendly relations and cooperation between states in accordance with the Charter of the United Nations of October 24, 1970. // International law in documents: Proc. allowance / Comp: N.T. Blatova, G.M. Melkov - 5 th ed., Pererab. and additional. - M., 2004. P. 17.

13. Shershinevich G.F. General theory of state and law. Issue. 2. - M., 1911. S. 440.

14. Luo, C., Li, M., Peng, P., and Fan, S. (2018). How Does Internet Finance Influence the Interest Rate? Evidence from Chinese Financial Markets. Dutch Journal of Finance and Management, 2(1), 01. <https://doi.org/10.20897/djfm/89590>

15. Marchenko M.N. Legal systems of the modern world. Tutorial. - M., 2009. P. 235, 236.

16. Oriu M. the basis of public law. - M., 1929. With. 138.

17. Morozova A.S., Karasev A.T. Some approaches to understanding state sovereignty. // History of the state and law. 2014. No. 20. P. 48 - 50.

18. "In the case on the verification of the constitutionality of certain provisions of the Constitution of the Republic of Altai and the Federal Law" On general principles for the organization of legislative (representative) and executive organs of state power of the subjects of the Russian Federation ": Decree of the Constitutional Court of the Russian Federation of June 7, 2000 No. 10-P // Bulletin of the Constitutional Court of the Russian Federation. 2000. № 5.