

# **THE APPLICATION OF THE ECHR JUDGEMENTS AND DECISIONS BY THE COURT OF THE EURASIAN ECONOMIC UNION (THESES)**

Valentina Esenova\*

## **Introduction**

The growth in the total number of international courts was supposed to provide the evidence of strengthening of the international law and its sustainability. In Yu.N. Starilov's opinion, many such courts have a mandatory jurisdiction and are entitled to consider disputes involving individuals and legal entities and are characterized by the binding power of their judgements. The most important for Russia are, as before, the European Court of Human Rights (ECHR) and the Court of the Eurasian Economic Union (EEUC). Thus, the researcher believes, the study of specific issues of the effective international justice and the enforcement of judgements becomes particularly pressing [1]. However, the urgency is enhanced by the fact that the abidingness of enforcement of these courts' decisions applies only to the subjects of justice of the relevant court. The courts act separately in relation to each other. It follows from this that the enforcement of judicial resolutions is an important issue; nevertheless, the mutual recognition of identified legal positions and their subsequent mutual legal enforcement is not less important. In these terms, we can talk about contingency or unification of legal enforcement in the procedural activities of international courts.

## **Main problems and tasks**

The paper explores some aspects of the Court of the Eurasian Economic Union's activities and the prospects of its development among a number of other independent international courts.

The Eurasian Economic Union (The EAEU) is an international organization for regional economic integration. Its bodies include the Court that operates on a permanent basis. The theses deal with some aspects of the EAEU Court practice of the application of the ECHR decisions on some complex legal issues.

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The conclusion substantiates the idea of mutual respect of courts as well as the importance of an integrated legal and economic space.

In this research by the method of analysis some important problems have been posed, as follows:

1. States involvement in the international multilateral contractual relations contributes in meeting different regional economic challenges. However, approximation and unification of the inter-state economic and legal basis doesn't exclude the necessity of the balancing national public interest. This issue is resolved among other things by the jurisdiction of the appropriate court.

The relationship between the Russian Federation and the international courts has taken shape in a different way. For instance, the acts of the International Court of Arbitration in The Hague in relation to Russia may have not only legal, but also political components [2], which complicates recognition of such decisions on the territory of the Russian state. On the contrary, in relation to EEUC, the Russian Federation, along with the member nations, is actively helping to promote the justice in the Economic Union. Certain difficulties arise from time to time in enforcement of court orders of the European Court of Human Rights. Therefore, it has repeatedly passed disputable court orders. After making amendments in the current federal constitutional legislation, the controversial judgments of ECHR are subject to verification by the Constitutional Court of Russia in respect of possibility of their enforcement on the territory of Russia. However, the impact of ECHR's decisions on the development of the legal system in Russia is not contested.

2. The Eurasian Economic Union (The EAEU) is an international organization for regional economic integration. Its legal personality is established by the Treaty on the Eurasian Economic Union[3]. Nowadays the Member-States of the Eurasian Economic Union are the Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic and the Russian Federation. Today ten more states are the potential candidates to join the Union [4]. Other countries expressed interest to the economic activity of the EAEU.

3. Bodies of the Union are represented by Supreme Eurasian Economic Council, the Eurasian Intergovernmental Council, the Eurasian Economic Commission and among them by the Court of the Eurasian Economic Union. The main aim of the Court is to ensure uniform application by the Member States and Bodies of the Union of the Treaty, international treaties within the Union, international treaties of the Union with a third party and decisions of the Bodies of the Union. Moreover, the Court resolves disputes arising at the request of an economic entity on challenging actions (omissions) of the Commission, on compliance of a decision of the Commission or its certain provisions with the Treaty on the Eurasian Economic Union. In the exercise of justice, the Court applies [5]:

- 1) the generally recognized principles and regulations of international law;

2) the Treaty, international treaties within the Union and other international treaties to which the states that are parties to the dispute are participants, decisions and dispositions of the Bodies of the Union;

3) the international custom as evidence of the general practice accepted as a rule of law.

Currently, the Court of the Eurasian Economic Union is considering a predominant number of triable disputes arising among the members of the Customs Union. It is also at the stage of formation, which inevitably urges it to search for due ways of resolving contentious legal forms.

The Statute of the Court of the EAEU doesn't have any references to the possibility of the application of the European Court of Human Rights (the ECHR) decisions. What is more, the Republic of Belarus, Republic of Kazakhstan and the Kyrgyz Republic are not the members of the Council of Europe so they have the right not to apply the ECHR legal position [6]. Nevertheless, in a legal limbo the EAEU Court refers to the ECHR decisions. It is mostly caused by the discrepancy between different international courts practices in application of the international law regulations. This issue is also exacerbated by the isolation of international courts and tribunals [7]. Meanwhile, the EAEU Court activity is in the nature of integration.

For instance, the Judgment of 21 February 2013 contains a reference to the ECHR judgment on *Credit Industrial Bank v. Czech Republic* case. In this decision the ECHR protects the legal interest of the companies that aim to get back to the professional market segment. So the European Court considers this interest legal. The same judgment was made by the Court of the Eurasian Economic Union.

On the other case of 3 June 2016 the EAEU Court has interpreted the «conflict of interest» in terms of public services guided by among other things international courts' decisions. The judgment based on the ECHR [8] (*Pellegrin v. France*, 28541/95; *Frydlender v. France*, 30979/96) and the *Court of Justice of the European Union* (the CJEU) decisions (*C-149/79 Commission of European Communities v. Kingdom of Belgium* [1982], ECR 3881).

The strategic importance of the Court of the Eurasian Economic Union is not limited to consideration of disputes among the participants of the Customs Union. In 2016, St. Petersburg International Economic Forum formulated, for the first time, the challenge of creating a Comprehensive Greater Eurasian Partnership with participation of China, India, Pakistan, Iran, CIS countries and a number of other states. Nevertheless, interaction with the European Union through recognition and enforcement of the decisions of the European Court of Human Rights will also remain among the strategic objectives. The task set by the Eurasian Economic Union – "the search for a model of economic and legal development that would not create any dividing lines and would not contradict to

the general trends of the economic, legal and political development" – does not contradict to the above [9].

## Conclusion

No doubt, the integration of the common law enforcement approaches contributes, on the one hand, to the sustainability of the international law regulations and, on the other hand, to the development of inter-state cooperation. Despite the fact that the EAEU Court is not that well-known as the European Court of Human Rights, the *Court of Justice of the European Union*, the MERCOSUR Permanent Tribunal of Revision its enforcement activities are focused on the international common law stabilization. The acceptance of the legal positions of the European Court of Human Rights by the EEUC in the absence of interstate agreements and contacts between the courts has become a factor promoting voluntary international legal integration of the Economic court.

Common legal and economic space is the main development course of the modern world [10]. In the fair opinion of Neshataeva V.N., the improvement of the legal provisions, mutual respect of the courts and willingness to cooperate are the means that can help to overcome the international law fragmentation. But it can't be done without the goodwill of the international courts judicial community.

## Notes:

[1] Starilov Yu. N. (2018), Briefly on the role of international courts. Modern problems of the international and Eurasian justice. Issue 10, available at: [http://www.law.vsu.ru/science/publications/pdf/jubilee2017\\_10.pdf](http://www.law.vsu.ru/science/publications/pdf/jubilee2017_10.pdf), page 4 (accessed on 30 January, 2018).

[2] Permanent Court of Arbitration. Case No. 2014-02. In the matter of the Sunrise Arbitration, available at: <https://pcacases.com/web/sendAttach/1438> (accessed on 17 November 2017).

[3] The treaty on the Eurasian Economic Union (signed in Astana on 29.05.2014) (wording as of 08.05.2015), available at: <http://www.pravo.gov.ru> (accessed on 21 November, 2017).

[4] Moldova, Tajikistan, Uzbekistan, Mongolia, Turkmenistan, Iran, Turkey, India, PRC, Tunisia.

[5] The statute of the Court of the Eurasian Economic Union. Annex No. 2 to the Treaty on the Eurasian Economic Union, available at: [www.eaeunion.org](http://www.eaeunion.org) Eurasian Economic Union (EEUC) (accessed on 20 December 2017).

[6] The case "OAO Southern Kuzbass Coal Company vs. Eurasian Economic Commission" and "OOO ONP vs. EEC, available at: <http://www.eaeunion.org/> (accessed on 11 November 2017).

[7] Neshataeva T. N. (2015), The European Convention on Human Rights and integration of integration: the ways to overcome the fragmentation of international law // International Justice, No. 4. – P. 3, 6, 7, 10.

[8] ECHR judgements: "Pellegrin vs. France", 28541/95; "Frydlender vs. France", 30979/96; "Commission of European Communities vs. Kingdom of Belgium" [1982], ECR 3881.

[9] Entin M. (2017), The European integration project has alternatives // Immanuel Kant Baltic Federal University, available at <https://www.kantiana.ru/news/145/205045/> (accessed on 25 November, 2017.)

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Starilov Yu, N. (2017), Briefly on the role of international courts. Modern problems of the international and Eurasian justice. Issue 10, available at: [http://www.law.vsu.ru/science/publications/pdf/jubilee2017\\_10.pdf](http://www.law.vsu.ru/science/publications/pdf/jubilee2017_10.pdf), page 4 (access on 30 January, 2018).

Neshataeva T.N. (2015), The European Convention on Human Rights and integration of integration: the ways to overcome the fragmentation of international law // International Justice. – No. 4. – P. 3, 6, 7, 10

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### **Abstract**

The paper explores some aspects of the Court of the Eurasian Economic Union's activities and the prospects of its development among several other independent international courts.

The Eurasian Economic Union (The EAEU) is an international organization for regional economic integration. Its bodies include the Court that operates on a permanent basis. The theses deal with some aspects of the EAEU Court practice of the application of the ECHR decisions on some complex legal issues. The conclusion substantiates the idea of mutual respect of courts as well as the importance of an integrated legal and economic space.

**Key words:** Eurasian Economic Union, decision, European Court of human rights, integration, stability, sustainability of the law.

**JEL:** K33