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The Problems of Effectiveness and Implementation of the International Legal Norms of the States of the Eurasian Economic Union (EAEU)

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(Presented by Academy Member Avtandil Silagadze)

ABSTRACT. The paper is devoted to the study of theoretical and practical problems of effectiveness and implementation of the international legal norms of the states of the EAEU. Based on the results of a scientific study of the legal nature of the Eurasian Economic Union and its norm-setting process, the authors obtained conclusions that allow us to determine options for improving the legal aspects of the activities of the EAEU. The proposals on improvement of the norms of the EAEU states have been developed in terms of their effectiveness and implementation. The significance of the study is that proposals and conclusions, formulated by its results, can be used in the practice of bodies and persons, authorized to be guided by international law, in preparation and conclusion of the international treaties, in law-enforcement activities. © 2019 Bull. Georg. Natl. Acad. Sci.

Key words: international law, supranational mechanisms, international acts, foreign policy priorities

Since the moment of formation of the Eurasian Economic Union (hereinafter – the EAEU, the Union), its activity raises many questions in international legal science. All the time, there is a question of the legal nature of the EAEU, of relations between the EAEU and other states, of the integration entities within the framework of the EAEU, of the need for development and reformation. In this regard, the special attention is paid to questions related to the effectiveness of the

norm-setting process within the framework of this organization, the level of implementation of the adopted international acts, the problem of their implementation in the national legal systems of the member states of the EAEU [1-5].

However, the effectiveness of interstate acts of the EAEU in many cases remains not fully effective [6]. They are fulfilled by participating states not sufficiently in a number of areas of cooperation. And the most important thing is that these non-

fulfillments take place in the spheres related to formation of a new economic order, a free trade zone, a single labour market [7]. The norms of international law aimed at formation of the single economic space and establishment of the single tax policy are not fully effective [8]. The problem of increasing effectiveness of international norms in the field of environmental protection remains very acute and urgent. All this shows that the potential, laid down in the acts concluded within the framework of the EAEU, still is fully implemented in practice, and many things need to be done to improve the norms of international law, to increase their effectiveness [9].

Certainly, the underlying causes of not high effectiveness of many norms of the Union are rooted not in legal spheres, but in political and socio-economic ones, as rightly many researchers note [10,11]. Development of cooperation with the EAEU countries is one of the main foreign policy priorities for the Republic of Kazakhstan. The work on deepening integration in the space of the Union remains priority for Kazakhstan. This direction is connected with obtaining specific advantages in world markets not least of all. However, the issues of effectiveness and implementation of the international norms of the EAEC have not been the object of a special study in the international and legal science of Kazakhstan. The scientific interest is presented by the publications of scientists from the EAEU states [12-14], as well as authors from other countries, devoted to the study of effectiveness and implementation of international legal acts, norms and institutions. Therefore, the most acceptable thing is to determine the effectiveness of international law as a social performance of their actions [15]. Most of the existing studies of integration processes in the post-Soviet space are devoted to the Commonwealth of Independent States (CIS).

Methodology

In this study, the international legal norms of the EAEU are studied as a developing institution,

existence of which is conditioned by those social trends that indicate the direction of the contemporary development of international law in the post-Soviet space. In order to implement the purpose and objectives of the study, specific scientific methods are defined and implemented in the work. This is a deductive and inductive method, namely, the descent from the general philosophical concepts, positions and principles through legal ideas and theories to the specific factors of the genesis of the EAEU law. Deduction extends to the study of general conclusions on formation and development of international legal norms. Induction represents the use of concrete historical material obtained from a wide variety of sources to draw up a general picture of contemporary state of the effectiveness of operation of international norms both in our republic and in other countries of the EAEU. Paired methods of analysis and synthesis are another basis of the study. The analytical method ensures the disclosure of the sources of the EAEU law as a complex legal system, in the structure of which it is possible to single out certain legislative components. The analysis ensures decomposition and separation of the investigated object into important constituent elements and their study separately, which allows to carry out prognosis of development of the study object.

The predictable value of the purely legal method of a comparative law study is doubtless. This method allows to predict the dynamics of development in parallel cases in other systems that exist under the same or similar regularities. This method is widely used in legal science. Moreover, the legislative practice in the modern world uses a comparative legal method not only for the purposes of scientific and theoretical analysis, but also for development of concrete practical solutions in the sphere of norm-setting. The normative base of the study has been processed by the method of comparative legal analysis. The theoretical basis of the study was composed by the works of leading

scientists in the sphere of the theory of international law, the provisions of the international treaties of the EAEU, the legislation of the Republic of Kazakhstan and other states, analyzed for implementation of the international legal norms.

Results and Discussion

Justification of novelty of research. The novelty of the study is an attempt to identify and substantiate theoretical and practical problems of the effectiveness of the norms, adopted by the states of the Union, and their subsequent implementation.

1. The effectiveness of the international legal norm is a complex category that characterizes the quality of the international norm [16]. The main features that characterize the norm as effective are its validity, reality, the ratio of the goal and the result achieved. In such a case, it is necessary to distinguish the effective norm of international law in two meanings. In the first meaning, it can be assessed by the way it is fixed in international legal acts and legal customs. In the second case, the effective norm can be assessed only on the basis of the entire process of its action, starting with its content, mechanism of implementation and availability of the result achieved.

2. The national law of the participating states of the Union has a meaningful effect on implementation of the international legal norms of the EAEU. In connection with this, the study substantiates the difference between the effectiveness of the norms, adopted by the EAEU states, and the effectiveness of their implementation both in the interstate sphere and in the domestic one.

3. Considering the problem of effectiveness and implementation of the norms of international law, it is necessary to follow the method of system approach, as there are problems of not only a legal nature, but also economic and political ones. This was clearly demonstrated in the activities of the Union, where many of its norms remain unrealized due to their low effectiveness in various spheres.

4. The existing tendency in the Republic of Kazakhstan to bring national legislation in line with the provisions of international legal norms allows to improve the Kazakhstan legal system, bringing it closer to the world standards in various spheres – economic, social, cultural and political. At the same time, the method of implementation, which will be used to achieve the purpose, entirely depends on Kazakhstan.

5. The result of the study suggests the following forms of improving the institutional system within the framework of the EAEU. It seems necessary to improve the effectiveness of the acts taken in the framework of the EAEU in two interrelated ways: 1) vesting of the Union bodies with the right to take decisions of direct action in the territory of the participating states, which do not require their subsequent implementation into domestic law and have a binding legal effect and primacy over national legal acts in case of collisions; 2) vesting of the EAEU bodies with the power to exercise effective control within the framework of traditional international legal procedures and consolidation of other special legal mechanisms of integration in the constituent agreement [17]. The low effectiveness of the mechanisms for monitoring the implementation of adopted acts and the responsibility measures of the member states of the Union for non-fulfillment of obligations leads to non-fulfillment of acts adopted within the framework of integration associations of the EAEU participating states.

Features of international law. Providing a qualitative description of the international legal norm, the theory of international law considers it primarily as capable of making impact on certain legal relations. Effectiveness is a manifestation of the ability of the norm of international law to have a positive impact on international relations, the behavior of states and other subjects of law in the direction determined by the purpose of this norm in order to achieve certain social results. On the basis

of this position, we carried out an analysis of the contractual framework, regulating the common customs space of the EAEU. The analysis revealed that the international legal norms of the EAEU in the sphere of customs regulation are characterized by their effective internal quality: validity, reality, assurance, etc., successful action, implementation, cost-effectiveness and achievement of the purpose that corresponds to the needs of the progressive development of international relations. At the same time, it should be emphasized that today it is very difficult to single out any norms of international law that would correspond to the above description theoretically.

In the process of realization, it is necessary to distinguish, firstly, the direct actual activity of the states and other subjects of law aimed at enforcement of the norms of international law, achievement of socially significant result; secondly, to distinguish between legal and organizational actions, such as issuance of additional normative acts, including administrative enactments, creation of special bodies, monitoring compliance with the norms of the international treaty.

The following methods of implementation were most widely used: transformation, incorporation, sending, adaptation, reception. The specified methods of adjustment of domestic and international law depend on the law of the particular state. At the same time, states can agree on the use of certain methods of adjustment. But the essence of this process is always equal: the state must bring domestic law in line with the international law in order to ensure compliance with prescriptions, permissions and prohibitions established by the latter. Under the Constitution of the Republic of Kazakhstan (clause 3 of Article 4), both methods of implementation are provided. Expressing its consent to be bound by the international treaty through accession or approval, as well as in case of its ratification, Kazakhstan also assumes certain international obligations [18]. The

current tendency in the Republic of Kazakhstan to bring national legislation in line with the provisions of international legal norms allows to improve the Kazakhstani legal system, to bring it closer to world standards in various fields of economic, social, cultural, political life of the world community, and the implementation method, which will be used for achievement of the purpose, entirely depends on Kazakhstan [19].

The study carried out an analysis of the organizational and legal structure of the Union, its legal nature, as they raise a lot of questions in international legal science. It is noted that the states concluded over 200 international treaties in the framework of the EAEU by the states, adoption of which passed several basic stages. It was concluded that the national law of the Union participating states has a significant impact on the process of implementation of the international legal norms of the EAEU. In connection with this, the study substantiates the difference between the effectiveness of the norms, adopted by the EAEU states, and the effectiveness of their fulfilment, both in the interstate sphere and in the domestic one. So, the state's signing of the resolution does not mean its subsequent approval and execution by the national state bodies.

The analysis of intergovernmental treaties in the economic sphere allows in general to talk about a sufficient legal mechanism for regulating relations for development of the single economic space. In this regard, the Treaty on the Eurasian Economic Union of May 29, 2014, was subjected to careful analysis, in order to form and develop the freedom of movement of goods, services, capital and labour force, operating a concerted, coordinated or single policy in certain sectors of the economy. In the development of the Union's integration process, concrete measures were developed for the new-term outlook to deepen cooperation in the following main spheres: in the financial and economic areas, in energy management, in matters of technical regulation, competition and antitrust

activity, in the humanitarian and social areas, in coordination of digitalization and development of the innovative technologies.

International legal cooperation in the framework of the EAEU. National legal norms are brought into conformity with the international obligations of this state. It is the norms of domestic law that ensure the implementation of international law. Only in this format we can speak of the primacy of international law. Actually, the international treaties can not regulate relations between subjects of internal law, as the norms of national law always authorize the application of international treaties. The same thing happens in case of the self-executing treaties. When it is not required to adopt a special domestic act, an automatic transformation takes place, primarily through referential norms of the domestic legislation. Three mechanisms of integration cooperation objectively function in the post-Soviet space. The regional mechanism operates within the CIS countries, the subregional one – within the framework of separate integration associations, including in the format of the EAEU, and the bilateral one is based on interstate cooperation of individual states. At the same time, there is no clear mechanism for harmonizing and interrelating international acts, adopted at various levels of cooperation and integration.

Further solution of the problems of improving forms and methods of the international legal cooperation within the framework of the EAEU can be ensured by solving the following specific tasks: improvement of the effectiveness of control over the international obligations, undertaken by the states, in terms of implementation in the national legal system and organization of the functioning of the institutional system of guarantees. Existing systems of control are reduced to reporting and administrative procedures, which determine discussion and report to the form of control. We believe that the control mechanism of the EAEU

needs partial reform, which should primarily concern the legal regulation of implementation of the procedures for consideration of the reports. It is necessary to adopt special contractual norms on the legal status and distribution of competence between the EAEU bodies that carry out control, as well as the nature of their solutions. It is advisable to develop a system of sanctions for non-fulfillment of the accepted obligations by the Union participating states. The effectiveness of the integration actions of the EAEU states will depend on the fact what level and competence the interethnic or supranational bodies will be created, what rights of sovereign states will be transferred to them, and what will be the relation to their activities.

Conclusion

The conducted analysis of the study allowed to draw the following conclusions:

1. The effectiveness of the international norm largely depends on objective and subjective factors and conditions that affect on the level of effectiveness of the operation of international law. Especially, nature and tendency of the development of international law, the level of development of states, international norm-setting, organized nature and activity of all forces of the world, world public opinion, socio-political formation of the states that participate in international relations, interest of the states in the implementation of norms and principles of international law, in fulfillment in good faith of their international obligations. The main features that characterize the norm as effective one are its validity, reality, the ratio of the purpose and the result achieved. In this regard, it is necessary to distinguish the effective norm of international law in two meanings. In the first meaning, it can be assessed by the way it is fixed in international legal acts and legal customs. In the second case, the effective norm can be assessed only on the basis of the entire process of its operation, starting with its content, mechanism of implementation and availability of the result achieved.

2. The important feature of functioning of mechanism of international legal regulation is its division at the stage of implementation of legal norms into two subsystems – international and domestic. The degree of effectiveness of international legal norms depends critically on the level of their implementation. In view of this, it is necessary to distinguish between the effectiveness of the norms, adopted by the EAEU states, and the

effectiveness of their implementation, both in the interstate sphere and in the domestic one.

3. For the purpose of effective activity of the interstate bodies of the EAEU, it is necessary to develop and classify types of acts of the Union, a part of which would operate directly in the territory of the EAEU participating states without any internal procedures (in other words, without ratification).

ეკონომიკა

ევრაზიული ეკონომიკური კავშირის (ეაეკ) ქვეყნების საერთაშორისო-სამართლებრივი ნორმების დანერგვასა და ეფექტურობასთან დაკავშირებული პრობლემები

ა. აბიკენოვი*, ს. იდრიშევა**, ა. ჟარბოლოვა*, ნ. აპახაევი§,
ე. ბურიბაევი#, ჟ. ხამზინა#

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** ყაზახეთის ჰუმანიტარულ-იურიდიული უნივერსიტეტი, იუსტიციის უმაღლესი სკოლა, ასტანა, ყაზახეთის რესპუბლიკა

§ კაინარის უნივერსიტეტი, ყაზახეთის ისტორიისა და სამართალმცოდნეობის ფაკულტეტი, ალმათი, ყაზახეთის რესპუბლიკა

აბაის სახელობის ყაზახეთის ეროვნული პედაგოგიური უნივერსიტეტი, სახელმწიფო და სამოქალაქო სამართლის დარგების ფაკულტეტი, ალმათი, ყაზახეთის რესპუბლიკა

(წარმოდგენილია აკადემიის წევრის ა. სილაგაძის მიერ)

წინამდებარე ნაშრომი ეძღვნება ეაეკ-ის ქვეყნების საერთაშორისო-სამართლებრივი ნორმების დანერგვასა და ეფექტურობასთან დაკავშირებულ თეორიულ და პრაქტიკულ პრობლემებს. ევრაზიის ეკონომიკური კავშირისა და მისი ნორმების დანერგვის პროცესის სამართლებრივი ხასიათის მეცნიერული შესწავლის შედეგებზე დაყრდნობით, ავტორებმა გამოიტანეს დასკვნები ეაეკ-ის საქმიანობის სამართლებრივი ასპექტების გაუმჯობესების ვარიანტების განსაზღვრად. ეაეკ-ის ქვეყნების ნორმების გაუმჯობესების შეთავაზებები მათი ეფექტურობისა და დანერგვის კუთხით შემუშავდა. წინამდებარე კვლევა მნიშვნელოვანია იმდენად, რამდენადაც მისი შედეგებით ფორმულირებული დასკვნები და შეთავაზებები

შეიძლება გამოყენებულ იქნეს იმ სახელმწიფო ორგანოებისა და პირების საქმიანობაში, რომლებიც უფლებამოსილი არიან იხელმძღვანელონ საერთაშორისო კანონმდებლობით, საერთაშორისო ხელშეკრულებების მომზადებისა და დადებისას, და სამართალდაცვით საქმიანობაში. დასკვნები და შეთავაზებები შეიძლება გამოყენებულ იქნეს საერთაშორისო სამართლის შესწავლის პროცესში, სპეციალური კურსების კითხვის, სამეცნიერო კვლევის შედეგებისა და სასწავლო დამხმარე წიგნების მომზადებისას, რომლებიც შეეხება საერთაშორისო-სამართლებრივი ნორმების შედგენის გამოვლენისა და დადგენის მექანიზმის პრობლემებს.

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