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ON THE HIERARCHY OF NORMATIVE LEGAL ACTS IN THE LEGAL SYSTEM: EXPERIENCE OF CONSULAR WORK ABROAD

INTRODUCTION. *The article analyzes the current problems of the consular service. In the practical work of officials of the consular service of the Russian Federation, periodically arise situations in which it is necessary to make decisions taking into account the hierarchy of national legal acts and norms of international law, which are an integral part of the legal system of Russia. The situation complicated by the lack of a normative document that clearly and unambiguously regulates the hierarchy of legal acts that make up this system. The present article, based on the experience of the authors' work abroad, is a comprehensive study for making possible decisions within the framework of the issue under consideration on those non-standard issues that periodically are faced by employees of consular offices.*

MATERIALS AND METHODS. *This article is based on the analysis of the provisions of article 15 of the Russian Constitution (taking into account the recently introduced amendments to the Constitution), on the decisions of the Constitutional and Supreme courts of Russia, laws of the Russian Federation, in particular, of the Civil code of the Russian Federation and the Federal law «On international treaties of the Russian Federation», and also in comparison of the legal systems of Russia, USA and Norway in the question of the primacy of national or international law, as well on real situations that occurred during one of the author's work in the consular service of the Russian MFA. The research method is based on the General scientific method of cognition.*

RESEARCH RESULTS. *The article leads to the conclusion that in the question of the primacy of national or international law in the domestic legal system of a state gives its legislation different degrees of freedom to the Supreme state bodies in a flexible approach to the implementation of international legal obligations within the framework of the generally recognized principle of international law «pacta sunt servanda» – «treaties must be observed». Besides, within the framework of Russian national law, there are legally established opportunities to implement the norms of subordinate normative acts in the presence of a law that regulates the same type of relations in a different way.*

DISCUSSIONS AND CONCLUSIONS. *The article provides a regulatory framework that can be used by Russian foreign offices and the MFA in case of violation by the authorities of the host country of the norms of bilateral and multilateral treaties to which Russia and the country concerned are parties. As a conclusion, it is suggested that a clear understanding of the hierarchy of normative acts in the Russian legal system is necessary for its*

competent application by officials of Russian foreign offices in solving issues in the field of national legislation, as well as the use of international law by these persons in protecting the rights and interests of the Russian Federation, its legal entities and individuals.
KEYWORDS. *Hierarchy of normative acts, legal system of the state, national legislation, international law, place of international law in the legal system of the state, amendments to the Constitution of the Russian Federation, delegation of powers, correlation of the Constitution and international law, Russia, USA, Norway.*
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ОБ ИЕРАРХИИ НОРМАТИВНЫХ ПРАВОВЫХ АКТОВ В ПРАВОВОЙ СИСТЕМЕ: ОПЫТ КОНСУЛЬСКОЙ РАБОТЫ ЗА РУБЕЖОМ

ВВЕДЕНИЕ. *В статье анализируются актуальные проблемы деятельности консульской службы. В практической работе должностных лиц консульской загранслужбы Российской Федерации периодически возникают ситуации, в рамках которых необходимо принимать решения с учетом иерархии нормативно-правовых актов и норм международного права, которые являются составной частью правовой системы России. Ситуация осложняется отсутствием нормативного документа, который четко и однозначно регламентировал бы иерархию входящих в ее состав правовых актов. Данная статья, основанная на опыте работы авторов за рубежом, представляет собой емкое исследование для принятия возможных решений в рамках рассматриваемой проблематики по тем нестандартным вопросам, с которыми периодически сталкиваются сотрудники консульских учреждений.*
МАТЕРИАЛЫ И МЕТОДЫ. *Настоящая статья основывается на анализе положений статьи 15 Конституции России (с учетом изменений, внесенных недавно в Конституцию), постановлений Конституционного и Верховного судов России, федеральных законов, в частности, Гражданского кодекса РФ и Федерального закона «О международных договорах Российской Федерации», а также на сравнении правовых систем России, США и Норвегии в вопросе о примате национального или международного права*

с использованием в качестве примеров реальных ситуаций, возникавших во время работы одного из авторов в консульской службе МИД России. В качестве метода исследования использован общенаучный метод познания.

РЕЗУЛЬТАТЫ ИССЛЕДОВАНИЯ. *Статья подводит к выводу о том, что в вопросе о примате национального или международного права в национальной правовой системе того или иного государства его законодательство предоставляет высшим государственным органам разную степень свободы в возможности гибкого подхода к выполнению международно-правовых обязательств в рамках общепризнанного принципа международного права: «pacta sunt servanda» – «договоры должны соблюдаться». Кроме того, в рамках российского национального права существуют установленные в правовом порядке возможности исполнять нормы подзаконных нормативных актов при наличии закона, по-иному регулирующего однотипные отношения.*

ОБСУЖДЕНИЕ И ВЫВОДЫ. *В статье приводится нормативная база, которой могут воспользоваться загранучреждения и МИД России в случае нарушения властями страны пребывания норм двусторонних и многосторонних договоров, участниками которых являются Россия и соответствующая страна. В качестве вывода выражается мнение о необходимости четкого понимания иерархии нормативных актов в российской правовой системе для ее грамотного применения должностными лицами российских загранучреждений при решении вопросов в области национального законодательства, а также использования этими лицами норм международного права при защите прав и интересов Российской Федерации, ее юридических и физических лиц.*

КЛЮЧЕВЫЕ СЛОВА. *Иерархия нормативных актов, правовая система государства, национальное законодательство, международное право, место норм международного права в правовой системе государства, поправки к Конституции Российской Федерации, делегирование полномочий, соотношение конституции и норм международного права, Россия, США, Норвегия.*

ДЛЯ ЦИТИРОВАНИЯ. Любимов А.П., Орешенков А.М. 2020. Об иерархии нормативных правовых актов в правовой системе: опыт консульской работы за рубежом. – *Московский журнал международного права.* № 4. С. 95–105. DOI: 10.24833 / 0869-0049-2020-4-95-105

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1. Introduction

The Russian legal system does not have a special Federal law that clearly and unambiguously regulates the hierarchy of its constituent regulations. The existence of this problem has been repeatedly discussed in the scientific literature [Lyubimov 2003; Lyubimov 2013].

Fundamental normative acts of the Russian consular foreign service – Federal law of the Russian Federation «Consular Charter of the Russian Federation» No. 154-FZ of 05.07.2010[1] and Decree of the President of the Russian Federation «On approval of The regulation on the consular institution of the Russian Federation» No. 1330 of 05.11.1998[2] – regulate the main areas of practical activity of consular institutions. But they do not contain any answers or tips on how to correctly establish and apply a single procedure for resolving periodically emerging complex situations, in which officials of the Russian consular service need to make decisions taking into account the hierarchy of national legal acts and international law. Such a law would serve as a necessary basis and a convenient tool for resolving unforeseen situations. In the absence of a special Federal law about normative acts of consular work abroad forms an unregulated sphere for the actions of lobbyists of various directions, including shadowy ones, and other dubious subjects of the law-making process in our country [Lyubimov 1997].

[1] See: Federal law No. 154-FZ of July 5, 2010 «Consular Charter of the Russian Federation». – Reference and legal system Garant. URL: https://base.garant.ru/12177011/ (accessed 10.04.2020).

[2] See: Decree of the President of the Russian Federation «On approval of The regulation on the consular institution of the Russian Federation» No. 1330 dated 05.11.1998. Official website of the President of Russia. URL: http://www.kremlin.ru/acts/bank/13091 (accessed 02.06.2020).

2. Main body

Some uncertainty about the hierarchy in the Russian legal system already follows from the Constitution of the Russian Federation. So according to part 2 of article 4 of the principal law of Russia: «The Constitution of the Russian Federation and Federal laws shall have supremacy throughout the Russian Federation» and part 1 of article 15: «The Constitution of the Russian Federation has Supreme legal force and direct effect and is applied throughout the Russian Federation»[3]. However, part 4 of the same article states: «If an international Treaty of the Russian Federation establishes rules other than those provided for by law, the rules of the international Treaty shall apply»[4]. In other words, the provisions of the principal law of the Russian state initially contain some ambiguity in the question of whether national or international law has primacy in the Russian legal system.

In the comments to part 4 of article 15 of the Constitution of the Russian Federation (edited by V.D. Zorkin and L.V. Lazarev)[5] the authors point to the distinction made by the Constitution (in relation to the above-mentioned provisions of our principal law) between the operation and application of legal norms, from which follow «the limits of priority of an international Treaty in application in the event of its collision with the national legal order. In particular, the Constitution occupies a dominant position in the hierarchy of the legal system and in the event of a collision with the norms of an international Treaty, by virtue of part 1 of article 15, it always has absolute supremacy; only international treaties ratified by the Federal legislator have an advantage in their application, as for intergovernmental or interdepartmental agreements, they do not have such an advantage in relation to the national law, which follows from the interrelated provisions of Constitutions art. 10, 71, 86, 90, 105-107, 113, 114, 125 etc.».

At the same time, they draw attention to the fact that «in the text of part 4 of the commented article clearly browses the recognition of international and domestic law as two different legal systems, which has deep grounds. In particular, international law differs from domestic law in terms of the scope of regulation, subjects, processes of creation and sources, guarantees of compliance, and continues to be mainly interstate law. As for the Constitution, it establishes a mechanism for their coordination and interaction». [Kommentarii k Konstitutsii… 2009:166]

A slightly different position is held by the well-known Russian international lawyer I.I. Lukashuk. In his textbook «International law», he notes, that: «The Constitution of Russia has included the generally recognized principles and norms of international law in the legal system of the country. This is called the incorporation of international law. However, the Constitution does not provide a direct answer to the question of the place of these norms in the legal system. The analysis of Russian law gives grounds to conclude that generally recognized principles and norms of international law have priority over the norms of law».[6]

The above-mentioned position and opinion should be considered subject to article 27 of the Vienna Convention on the Law of Treaties of May 23, 1969[7], which states: «A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty». Neither the position nor the opinion give a direct and unambiguous answer to the question of what rules should be applied in the event of a collision between the norm of the Constitution of the Russian Federation and the norm of an international Treaty to which the Russian state is a party, especially taking into account article 26 of the same Convention, which sets out the generally recognized principle of international law «pacta sunt servanda» – «treaties must be observed».

According to part 2 (g) of article 125 of the Constitution of the Russian Federation[8] and part 1(1) of article 3 of the Federal constitutional law of July 21, 1994 No. 1-FKZ «On the Constitutional court of the

[3] See: Constitution of the Russian Federation of December 12, 1993. – Collection of legislation of the Russian Federation. 2014. No. 31. Art. 4398.

[4] See: Constitution of the Russian Federation of December 12, 1993. – Collection of legislation of the Russian Federation. 2014. No. 31. Art. 4398.

[5] See: Commentary to the Constitution of the Russian Federation, ed. by V.D. Zorkin, L.V. Lazarev, Moscow: Eksmo, 2009, pp. 167-168.

[6] Lukashuk I.I. Mezhdunarodnoe parvo: Obshchaya chast' [International law: general part]. Moscow, Wolters Kluwer Publ. 2005. 432 p. (in Russ.), see also [Lukashuk 1968].

[7] See: Vienna Convention on the Law of Treaties, 1969 – The UN website. URL: https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf (accessed 09.10.2020).

[8] See: Constitution of the Russian Federation of December 12, 1993. – Collection of legislation of the Russian Federation. 2014. No. 31. Art. 4398.

Russian Federation»[9], the Constitutional court of Russia has the right to resolve cases on compliance of international treaties of the Russian Federation, that have not entered into force, with the Constitution of the Russian Federation. Chapter X of the same law defines the procedure for consideration of cases on compliance with the Constitution of the Russian Federation of international treaties of the Russian Federation that have not entered into force.

Article 22 of Federal law No. 101-FZ of July 15, 1995 «On international treaties of the Russian Federation»[10] states: «If an international Treaty contains rules requiring changes to certain provisions of the Constitution of the Russian Federation, a decision on consent to be bound by it for the Russian Federation may be made in the form of a Federal law only after making appropriate amendments to the Constitution of the Russian Federation or reviewing its provisions in accordance with the established procedure». In other words, it establishes a procedure for cases when Russia is considering entering into a Treaty or joining a Treaty containing provisions that do not correspond to or contradict the Constitution.

At present «... the bearer of sovereignty and the only source of power in the Russian Federation is its multinational people .... exercising their power directly, as well as through state authorities» (parts 1 and 2 of article 3 of the Constitution of the Russian Federation)[11]. If international treaties of the Russian Federation and its national laws are approved according to a single scheme (Federal Assembly → President), then the principal law of Russia and amendments to it (in relation to chapters 1, 2 and 9 of the Constitution) are submitted to a national referendum. From this point of view, the Constitution of the Russian Federation has the highest significance in the hierarchy of normative acts in the Russian legal system.

At the same time, in determining the hierarchical relations between the Constitution and international law, the Constitutional court of the Russian Federation has the power to resolve cases on compliance with the Constitution of the Russian Federation of international treaties of the Russian Federation that have not entered into force (part 2 of article 125 of the Constitution). Thus, the Constitutional court of the Russian Federation, using the powers given to it, gives an official, although sometimes criticized by Russian political scientists[12], interpretation of the relationship between the norms of Russian legislation and international law in the Russian legal system. Recently added amendments to the Constitution of the Russian Federation extend the powers of the Constitutional court of the Russian Federation.

In the Conclusion of the Constitutional court of the Russian Federation «On compliance with the provisions of chapters 1, 2 and 9 of the Constitution of the Russian Federation to the not yet entered into force provisions of the Law of the Russian Federation on amendments to the Constitution of the Russian Federation «On improving the regulation of certain issues of the organization and functioning of public power», as well as on compliance with the Constitution of the Russian Federation of the procedure for entry into force of article 1 of this Law in connection with the request of the President of the Russian Federation of March 16, 2020 No. 1-Z»[13] gives the Constitutional court them the following assessment:

«Article 1 of the amendment law provides for the addition of article 79 of the Constitution of the Russian Federation with the provision that decisions of interstate bodies adopted on the basis of provisions of international treaties of the Russian Federation in their interpretation that contradicts the Constitution of the Russian Federation are not subject to execution in the Russian Federation. It involves the addi-

[9] See: Federal constitutional law No. 1-FKZ of July 21, 1994 «On the Constitutional court of the Russian Federation». – Reference and legal system Garant. URL: http://base.garant.ru/10103790/ (accessed 17.07.2020).

[10] See: Federal law No. 101-FZ of July 15, 1995 «On international treaties of the Russian Federation». – Reference and legal system Garant. URL: https://base.garant.ru/10101207/ (accessed 10.04.2020).

[11] See: Constitution of the Russian Federation of December 12, 1993. – Collection of legislation of the Russian Federation. 2014. No. 31. Art. 4398.

[12] Chernyakhovskii S. *Volya naroda vyshe lyubykh mezhdunarodnykh norm [The will of the people is above any international norms].* 2011. URL: http://viperson.ru/articles/volya-naroda-vyshe-lyubyh-mezhdunarodnyh-norm (accessed 09.04.2020) (in Russ.)

13 See: The Conclusion of the Constitutional court of the Russian Federation on compliance with the provisions of chapters 1, 2 and 9 of the Constitution of the Russian Federation to the not yet entered into force provisions of the Law of the Russian Federation on amendments to the Constitution of the Russian Federation «On improving the regulation of certain issues of the organization and functioning of public power», as well as on compliance with the Constitution of the Russian Federation of the procedure for entry into force of article 1 of this Law in connection with the request of the President of the Russian Federation of March 16, 2020 No. 1-Z city of Saint Petersburg. – Rossiyskaya Gazeta. 17.03.2020. URL: https://rg.ru/2020/03/17/ks-rf-popravki-dok.html (accessed 09.10.2020).

tion of article 125 of the Constitution of the Russian Federation, according to which the Constitutional court of the Russian Federation in the order established by Federal constitutional law, resolves the issue on the possibility of execution of decisions of interstate bodies taken under the provisions of the international treaties of the Russian Federation in their interpretation, contrary to the Constitution of the Russian Federation, and also about possibility of execution of decisions of foreign or international (inter-state) court, foreign or international arbitration court (arbitration), imposing obligations on the Russian Federation, if this decision contradicts the principles of public law and order of the Russian Federation (point «b» of part 5[1]).

These provisions, as it directly follows from their wording, do not imply the refusal of the Russian Federation to comply with international treaties themselves and fulfill its international obligations, and therefore do not conflict with article 15 (part 4) of the Constitution of the Russian Federation.

This mechanism is not intended for approving the refusal to execute international treaties and decisions of interstate jurisdictional bodies based on them, but for developing a constitutionally acceptable method of executing such decisions by the Russian Federation while steadily ensuring the Supreme legal force of the Constitution of the Russian Federation in the Russian legal system, which includes unilateral and multilateral international treaties of Russia, including those providing for the relevant powers of interstate jurisdictions».

We see a different approach in the Norwegian legal system. Thus § 89 of the Constitution of this country[14] states: «In cases brought before the courts, the courts have the right and obligation to try whether it contradicts the Constitution to apply a legal regulation, and whether it contradicts the Constitution or the laws of the country to apply other decisions made during the exercise of Public Authority». Of particular interest is the fact that Norwegian legislators excluded this article from their Constitution in 1920, and 100 years later restored it to its primordial form by the Royal resolution No. 1086 of May 29, 2020[15].

Well-known Norwegian lawyer, Professor Johannes Andenæs, in his work «Sovereignty and property right on Svalbard», comments as follows decisions taken by Norwegian courts in the light of the Norwegian Constitution: «If the norms of Norwegian law do not comply with the treaty obligations of the state, the Norwegian courts should take Norwegian law as the basis. This applies regardless of whether the Treaty was concluded earlier or later than the adoption of the relevant legal norms. On the other hand, it is a generally accepted principle that Norwegian laws should, as far as possible, be interpreted in such a way that they comply with the international legal obligations of the state» [Andenæs1984]. In the future, this approach has undergone some changes [Isaev 2019: 91-103].

Analogous problems are solved in the US legal system in a similar way. Thus, the US Constitution (part 2 of article 6)[16], establishing the supremacy of the Constitution, laws and international treaties of the United States over the constitutions and laws of its constituent States, does not contain provisions that determine the place of international agreements in this system.

The ability to make decisions for this type of issue is provided for in § 1257 (a) of title 28 of the United States Code of laws[17], which states: «Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States». However, the Code does not provide a regulatory framework for their decision.

[14] See: Kongeriket Norges Grunnlov, 17.05.1814. – Legal reference system Lovdata. URL: https://lovdata.no/dokument/NL/lov/1814-05-17#KAPITTEL_2 (accessed 11.04.2020).

[15] See: The Royal resolution No. 1086 of May 29, 2020. – Legal reference system Lovdata. URL: https://lovdata.no/dokument/LTI/forskrift/2020-05-29-1086 (accessed 10.10.2020).

[16] See: The Constitution of the United States of America. – Reference and legal system State Symbols USA. URL: https://statesymbolsusa.org/symbol-official-item/national-us/state-cultural-heritage/united-states-constitution (accessed 09.10.2020). (This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.)

[17] See: 28 U.S. Code § 1257 (a). State courts; certiorari. – Website of the Legal Information Institute of the Cornell Law School. URL: https://www.law.cornell.edu/uscode/text/28/1257 (accessed 09.10.2020).

In the article «Characteristic traits and features of the US judicial system», Professor of the BSU faculty of law M.F. Chudakov writes: «State Supreme courts, when evaluating legal norms, use not only the US Constitution as a criterion, but also their own Constitution. Of course, they, like the US Supreme Court, use all the elements of the so-called «living» Constitution, i.e., previous court decisions, certain traditions, and their understanding of justice and the common good. We know the famous words of Charles Evans Hughes, one of the judges and then chief Justice of the United States Supreme Court, who said: «The Constitution is what the Supreme court says about it» [Chudakov 1999].

This approach, taking into account the peculiarities of the US judicial system, can also be applied for resolving issues that arise in the event of a collision between the norms of the national legislation of the United States and international treaties to which this country is a party. In the scientific literature, there are other points of view and issues related to national legal systems [Glebov 2015; Suzdal'tsev 2017; Shchitov 2019; Marochkin 2019; Roberts 2017; Tunkin 1974].

To summarize the above, it is advisable to note that the authority of a state in the international arena ultimately depends not on any form of supremacy, but on the ability of the state to faithfully comply with and fulfill its obligations. The US and Norwegian constitutions, which were adopted in 1787 and 1814 respectively, and which do not regulate the primacy of national or international law in any way, give the highest judicial authorities of these countries a greater degree of freedom in the possibility of a flexible approach to the implementation of international legal obligations within the framework of the generally recognized principle of international law «pacta sunt servanda». Although if we take the international practice of the United States in recent years, it is replete with legislative sanctions against many States, which does not always fit in with international law [Lyubimov 2018; Bendersky, Shchitov 2020].

Due to the absence of a law defining the hierarchy of the Russian legal system, staff members of Russian consular offices abroad when practical questions related to the need to take into account the relevant issues arise, should take into account the provisions of the Civil code of the Russian Federation, which establishes the hierarchy of by-laws in the field of law regulated by it. So art. 3 (5) of the Code[18] states: «If a decree of the President of the Russian Federation or a decree of the Government of the Russian Federation contradicts this Code or another law, this Code or the corresponding law shall apply».

The relevant provisions of the Civil code can be used to resolve similar issues in other areas of law. However, it should be borne in mind that the abovementioned principles may not always be automatically used, especially for those cases when in order to resolve a certain legal situation it is necessary to follow the regulations governing relations in different areas of law. For example, if obtaining socio-economic benefits, some category of Russian citizens is equal to the other in one area of regulated relations, equal category is not entitled to demand execution of the law from the appropriate place by analogy to obtain the benefits set forth in normative acts in other areas of law. In particular, this is due to the state's budgetary capabilities.

With regard to the range of non-standard issues that consular offices periodically face, their officials sometimes have to make decisions in an urgent mode of work. At the same time, consular offices abroad should be guided by the following hierarchical vertical of normative legal acts [Lyubimov 2006]:

1) The Constitution of the Russian Federation;
2) Generally recognized principles and norms of international law and international treaties of the Russian Federation;
3) Federal constitutional laws of the Russian Federation;
4) Federal laws of the Russian Federation;
5) Decrees of the President of the Russian Federation;
6) Resolutions of the Government of the Russian Federation;
7) Orders for the Ministry of Foreign Affairs of the Russian Federation;
8) Orders for the Embassy of the Russian Federation in the host country.

However, there are exceptions to the rules established by the Civil code, for example, p. 3 of «The administrative regulations of the Ministry of Foreign Affairs of the Russian Federation on the provision of state services for the registration and issuance of a passport certifying the identity of a citizen of the Russian Federation outside the territory of the Russian Federation containing an electronic data car-

[18] See: Civil code of the Russian Federation. – Reference and legal system Garant. URL: https://base.garant.ru/10164072/5ac206a89ea76855804609cd950fcaf7/ (accessed 10.04.2020).

rier» approved by order No. 2114 of 12 February, 2020[19], defines the procedure for obtaining information on the provision of appropriate public services.

In the case of conflicts on this legal field between applicants and employees of the consular institution, apply the decision of the Supreme Court of the Russian Federation of June 17, 2008 No. GKGI08-1158[20] and definition of Cassation Board of Supreme Court of the Russian Federation dated September 16, 2008 No. KAS08-485[21], from which follows that if there is a special regulatory legal act with less legal force in relation to the issues contained in the appeal, then the procedure for considering these issues does not fall, for example, under the regulatory provisions of the «Law on appeals», which has more legal force.

Similarly to the absence of a normative hierarchy in national legislation there is no established concept and list of generally recognized principles and norms of international law in the Russian legal system. The Supreme Court of the Russian Federation stated its position on the above-mentioned provision of the Constitution in its resolution No. 5 of October 10, 2003 «On the application by courts of General jurisdiction of generally recognized principles and norms of international law and international treaties of the Russian Federation»[22].

According to paragraph 1 of the resolution: «generally recognized principles of international law should be understood as fundamental peremptory norms of international law accepted and recognized by the international community of States as a whole, deviation from which is unacceptable. A generally recognized norm of international law should be understood as a rule of conduct accepted and recognized by the international community of States as a whole as legally binding».

It should also be recalled that the custom of presenting the head of the Embassy and its members to the authorities of the country where they arrived to carry out their mission has come into modern practice from the depths of centuries. Later, this international legal custom was codified and became a norm of international Treaty law, for example, of the Vienna Convention on diplomatic relations of April 18, 1961[23], article 10 of which provides for the accreditation of employees of foreign missions.

However, if the accreditation of newly arrived employees has become a norm of international Treaty law, the Convention does not regulate the form of notification of their arrival, final departure or termination of functions. The provision in its preamble that «the rules of customary international law should continue to govern questions not expressly regulated by the provisions of the present Convention» presupposes that the form of notification should be regulated by the rules of established custom.

In the present case, the introduction by the host state of a notification form based on national legislation would constitute a violation of the above-mentioned provision of the Vienna Convention. The sixth paragraph of p. 6 of the decree of the President of the Russian Federation No. 1497 of October 28, 1996 «On approval of The regulation on the Embassy of the Russian Federation»[24] prescribes Embassies to «monitor the implementation of bilateral agreements of the Russian Federation with the host state, as well as multilateral agreements regarding the relations of the Russian Federation with the host state».

The procedure for monitoring the host state's compliance with the norms of international Treaty law and measures taken in the event of their violation is also established by the provisions of parts 2 and 4

[19] See: Order of the Ministry of Foreign Affairs of the Russian Federation No. 2114 of February 12, 2020 «On approval of The administrative regulations of the Ministry of Foreign Affairs of the Russian Federation on the provision of state services for the registration and issuance of a passport certifying the identity of a citizen of the Russian Federation outside the territory of the Russian Federation containing an electronic data carrier». – Reference and legal system Garant. URL: https://www.garant.ru/products/ipo/prime/doc/74448481/ (accessed 13.09.2020).

[20] See: The Supreme Court of the Russian Federation. Decision of June 17, 2008 No. GKPI08-1158. – Archive of court decisions. URL: http://sudrf.kodeks.ru/rospravo/document/902122936 (accessed 10.04.2020).

[21] See: The Supreme Court of The Russian Federation. Cassation Board. Definition of September 16, 2008 No. KAS08-485. – Archive of court decisions. URL: http://sudrf.kodeks.ru/rospravo/document/902122949 (accessed 10.04.2020).

[22] See: Resolution No. 5 of the Plenum of the Supreme Court of the Russian Federation of October 10, 2003 «On the application by courts of General jurisdiction of generally recognized principles and norms of international law and international treaties of the Russian Federation». – Reference and legal system Garant. URL: https://base.garant.ru/12132854/ (accessed 10.04.2020).

[23] See: Vienna Convention on diplomatic relations of 1961. – The UN website. URL: https://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf (accessed 09.10.2020).

[24] See: Decree of the President of the Russian Federation No. 1497 of October 28, 1996 «On approval of The regulation on the Embassy of the Russian Federation». – Reference and legal system Garant. URL: https://base.garant.ru/10118700/ (accessed 10.04.2020).

of article 32 and article 33 of the Federal law of July 15, 1995 No. 101-FZ «On international treaties of the Russian Federation»[25], according to which «General monitoring of the implementation of international treaties of the Russian Federation is carried out by the Ministry of Foreign Affairs of the Russian Federation», which «in case of violation of obligations under an international Treaty of the Russian Federation by other parties to it (itself or jointly with other interested agencies) ... submits proposals to the President of the Russian Federation or to the Government of the Russian Federation to take the necessary measures in accordance with the norms of international law and the terms of the Treaty itself».

3. Conclusion

The absolute majority of consular actions performed by officials of foreign missions in the host countries are regulated by the national legislation of the sending state. At the same time, these functions are performed on the territory of a foreign state in relation to persons who are interested in resolving certain administrative and legal issues on the territory of the state represented by the consular official. This situation requires the consular officer to know and understand the interaction of national legislation, international law and the law of the host country.

While working in a foreign country, a Russian consular official is obliged, in accordance with the Russian Consular Charter, to protect the rights and interests of the Russian Federation and to take measures to ensure that citizens of the Russian Federation and Russian legal entities enjoy in the represented state in full the rights established by the Constitution of the Russian Federation, generally recognized principles and norms of international law, and international treaties to which the Russian Federation and the host state are parties, the legislation of the Russian Federation and the legislation of the host state.

Knowledge of the regulations listed in part 1 of article 1 of the Federal law of the Russian Federation «Consular Charter of the Russian Federation» No. 154-FZ of July 5, 2010[26] involves a very broad outlook, deep legal knowledge of consular officials, the ability to competently perform the listed legal regulations in solving of its tasks in the field of national legislation, and use of customary international law and the international treaties to which it is a party the host country and the represented state, while protecting the rights and interests of the Russian Federation, legal and physical persons in the territory of the host country.

Issues that were previously on the periphery of the tasks of the consular service have recently become particularly acute in the consular work. These include issues of criminal liability and punishment of Russian citizens on the territory of the host country [Lyubimov 2014], removal of children by juvenile authorities from the families of Russian citizens, labor immigration and migration [Pronchev and others 2019; Pronchev 2019]. A large amount of legal work is related to election campaigns, in particular, the organization of polling stations during the elections of deputies to the State Duma of the Federal Assembly of the Russian Federation or the President of the Russian Federation, counting the votes of Russian citizens living abroad [Lyubimov 1998; Shchitov 2018; Lyubimov, Oreshenkov 2020]. These issues, in addition to their knowledge or study, require the ability to use applicable regulations in specific circumstances on the spot in the host country, as well as the use of local legal advice.

International human rights treaties that can be actively used in the practical work of consular officials to protect the rights and interests of Russian citizens in the host country include «The Universal Declaration of Human Rights» adopted by the United Nations on December 10, 1948, «International Covenant on Civil and Political Rights» of December 19, 1966, «International Covenant on Economic, Social and Cultural rights» of December 16, 1966, and in the work of Russian consular institutions in Europe – «Convention for the Protection of Human Rights and Fundamental Freedoms» of November 4, 1950. The main difference between the Convention and the above-mentioned international human rights treaties is the actual mechanism for protecting the rights declared in the Convention by individual appeal to the European court of human rights (ECHR), which considers individual complaints on violations of the Convention.

[25] See: Federal law No. 101-FZ of July 15, 1995 «On international treaties of the Russian Federation». – Reference and legal system Garant. URL: https://base.garant.ru/10101207/ (accessed 10.04.2020).

[26] See: Federal law No. 154-FZ of July 5, 2010 «Consular Charter of the Russian Federation». – Reference and legal system Garant. URL: https://base.garant.ru/12177011/ (accessed 10.04.2020).

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