



RULING OF THE PLENARY SESSION OF THE SUPREME COURT OF THE RUSSIAN FEDERATION

No. 5

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On Application of Universally Recognized Principles and Norms of International Law and of International Treaties of the Russian Federation by Courts of General Jurisdiction

**(as amended by Ruling of the Plenary Session of the Supreme Court of the
Russian Federation No. 4 of 5 March 2013)**

In accordance with Part 4 of Article 15 of the Constitution of the Russian Federation, universally recognized principles and norms of international law and of international treaties of the Russian Federation are a constituent part of its legal system.

Federal Law No. 101 of 15 July 1995 “On International Treaties of the Russian Federation” stipulates that the Russian Federation, committing to the observance of conventional rules and customary norms, confirms its adherence to the basic principle of international law – the principle of fulfillment of international obligations in good faith.

International treaties are one of the main instruments of promoting international cooperation, serving the development of international relations with participation of governmental and non-governmental organizations, in particular with the participation of subjects of national law, including natural persons. International treaties play a paramount role in the protection of human rights and basic freedoms. Therefore, it is necessary to further improve the judicial activity regarding the implementation of provisions of international law on the national level.

In order to ensure the correct and uniform application of international law by courts in the administration of justice, the Plenary Session of the Supreme Court of the Russian Federation hereby rules to provide the following explanations:

1. Human and civil rights and freedoms are recognized and guaranteed in the Russian Federation in accordance with the universally recognized principles and norms of international law and pursuant to the Constitution of the Russian Federation (Part 1 of Article 17 of the Constitution of the Russian Federation).

In accordance with Part 1 of Article 46 of the Constitution of the Russian Federation, judicial protection of rights and freedoms is universally guaranteed.

Based on this premise and on the provisions of Part 4 of Article 15, Part 1 of Article 17 and Article 18 of the Constitution of the Russian Federation, human rights and freedoms have direct effect within the jurisdiction of the Russian Federation, in accordance with the universally recognized principles and norms of international law and the international treaties of the Russian Federation. They determine the meaning, contents and the application of laws, the activities of legislative and executive branches of power, of the local self-government, and are secured by justice.

The universally recognized principles of international law should be understood as the basic imperative norms of international law, accepted and recognized by the international community of states as a whole, deviation from which is inadmissible.

The universally recognized principles of international law include, inter alia, the principle of universal respect for human rights and the principle of fulfilment of international obligations in good faith.

The universally recognized norms of international law should be understood as rules of conduct, accepted and recognized as legally binding by the international community of states as a whole.

The contents of the said principles and norms of international law may be construed, in particular, in the documents of the United Nations and its specialized agencies.

2. International treaties of the Russian Federation, together with the universally recognized principles and norms of international law, are a constituent part of its legal system (Part 4 of Article 15 of the Constitution of the Russian Federation, Part 1 of Article 5 of Federal Law “On International Treaties of the Russian Federation”).

Effective international treaties of the USSR, in respect of which the Russian Federation continues to exercise the international rights and obligations of the USSR as the state-successor of the USSR, are also a constituent part of the legal system of the Russian Federation.

In accordance with Item “a” of Article 2 of Federal Law “On International Treaties of the Russian Federation”, an international treaty of the Russian Federation should be understood as an international agreement, concluded, in written form, by the Russian Federation with a foreign state (or states), with an international organization or another entity, entitled to conclude international treaties, and regulated by international law, irrespective of whether it is contained in a single document or in a number of interrelated documents, and also irrespective of its exact denomination (e.g. a convention, a pact, an agreement, etc.).

International treaties of the Russian Federation may be concluded on behalf of the Russian Federation (international treaties), on behalf of the Government of the Russian Federation (intergovernmental treaties), on behalf of federal executive bodies or designated organizations (interagency treaties).

3. In accordance with Part 3 of Article 5 of Federal Law “On International Treaties of the Russian Federation”, the provisions of officially published international treaties of the Russian Federation that do not require the adoption of national acts for their application have direct effect in the Russian Federation. Corresponding legal acts are adopted to implement other provisions of international treaties of the Russian Federation.

In particular, if an agreement obliges the participating states to amend their national legislation, this is one of the signs that the provisions of such an international agreement of the Russian Federation cannot be applied directly.

When considering civil, criminal or administrative cases, a court should directly apply such international treaties of the Russian Federation that entered into force and became binding for the Russian Federation, if their provisions do not require the adoption of national acts for their application and are capable of giving rise to rights and obligations for the subjects of national law (Part 4 of Article 15 of the Constitution of the Russian Federation, Parts 1 and 3 of Article 5 of Federal Law “On International Treaties of the Russian Federation”, Part 2 of Article 7 of the Civil Code of the Russian Federation).

4. When deciding whether it is possible to apply conventional norms of international law, the courts should proceed from the premise that a treaty enters into force in such manner and upon such date as it may provide or as the negotiating states may agree. Failing any such provision or agreement, a treaty enters into force as soon as consent to be bound by the treaty has been established

for all the negotiating States (Article 24 of the Vienna Convention on the Law of Treaties, 1969).

The courts should bear in mind that an international treaty is subject to application, provided that the Russian Federation, represented by competent state bodies, has expressed its consent to be bound by the treaty by completing one of the actions listed in Article 6 of Federal Law “On International Treaties of the Russian Federation” (by signing the treaty; exchanging the documents establishing it; by ratifying the treaty; approving of the treaty; accepting the treaty; acceding to the treaty; by acting in any other way, as agreed by the contracting parties), and on condition that the said treaty has entered into force for the Russian Federation (e.g. the Convention for the Protection of Human Rights and Fundamental Freedoms was ratified by the Russian Federation by Federal Law No. 54 of 30 March 1998 and entered into force for the Russian Federation on 5 May 1998, on the day of deposition of the ratification to the Secretary General of the Council of Europe in accordance with Article 59 of the Convention).

Proceeding from the substance of Parts 3 and 4 of Article 15 of the Constitution of the Russian Federation, Part 3 of Article 5 of Federal Law “On International Treaties of the Russian Federation”, the courts can directly apply those effective international treaties, which were officially published in the Collected Legislation of the Russian Federation, in the Bulletin of International Treaties, were placed on the “Official Internet Portal of Legal Information” (<http://www.pravo.gov.ru>), in the manner, stipulated in Article 30 of the aforementioned federal law. Interagency treaties of the Russian Federation are published upon decision of the federal executive bodies or of the designated organizations, on behalf of which such treaties are concluded, in the official publications of those bodies.

The international treaties of the USSR, that are binding for the Russian Federation as for the state-successor of the USSR, were published in the official publications of the Supreme Soviet of the USSR, of the Council (Cabinet) of Ministers of the USSR. The texts of those treaties were also published in collections of international treaties of the USSR, but such publication was not official.

Official announcements of the Ministry of Foreign Affairs of the Russian Federation, regarding the entry into force of international treaties, signed on behalf of the Russian Federation and of the Government of the Russian Federation, are subject to publication in the same manner as the international treaties (Article 30 of Federal Law “On International Treaties of the Russian Federation”).

5. International treaties that have a direct and immediate effect in the legal system of the Russian Federation can be applied by the courts (including military courts) in the consideration of civil, criminal and administrative cases, in particular:

- in the consideration of civil cases, if an international treaty of the Russian Federation stipulates other rules than the law of the Russian Federation, regulating the relations that are the subject matter of proceedings;
- in the consideration of civil and criminal cases, if an international treaty of the Russian Federation stipulates other rules of judicial proceedings than the civil procedural or criminal procedural law of the Russian Federation;
- in the consideration of civil and criminal cases, if an international treaty of the Russian Federation regulates the relations, that are the subject matter of proceedings, including relations with foreign persons (e.g. in the consideration of cases listed in Article 402 of the Civil Procedure Code of the Russian Federation, motions for the enforcement of foreign court decisions, appeals against decisions on the extradition of individuals accused of committing a crime or convicted by a foreign court);
- in the consideration of cases on administrative offences, if an international treaty of the Russian Federation stipulates other rules than those stipulated in the legislation on administrative offences.

The attention of the courts is drawn to the fact that if an international treaty of the Russian Federation stipulates other rules than those stipulated in federal law, the consent for that treaty to be binding for the Russian Federation must be expressed in the form of a federal law (Part 4 of Article 15 of the Constitution of the Russian Federation, Parts 1 and 2 of Article 5, Article 14, Item “a” of Part 1 of Article 15 of Federal Law “On International Treaties of the Russian Federation”, Part 2 of Article 1 of the Civil Procedure Code of the Russian Federation, Part 3 of Article 1 of the Criminal Procedure Code of the Russian Federation).

6. International treaties establishing the elements of criminally punishable actions cannot be directly applied by the courts, because such treaties explicitly oblige the states to ensure the implementation of obligations, stipulated in the treaties, by making certain crimes punishable by national law (e.g. the Single Convention on Narcotic Drugs, 1961; the International Convention against the Taking of Hostages, 1979; the Convention for the Suppression of Unlawful Seizure of Aircraft, 1970).

According to Article 54, Item “o” of Article 71 of the Constitution of the Russian Federation and Article 8 of the Criminal Code of the Russian Federation, a person is subject to criminal liability in the Russian Federation, if that person commits an action containing all the elements of a crime, stipulated in the Criminal Code of the Russian Federation.

In this regard, international law norms stipulating the elements of crimes must be applied by the courts of the Russian Federation if a norm of the Criminal Code of the Russian Federation directly stipulates the need to apply an international treaty of the Russian Federation (e.g. Articles 355 and 356 of the Criminal Code of the Russian Federation).

7. By virtue of Part 4 of Article 11 of the Criminal Code of the Russian Federation, if a diplomatic representative of a foreign state or another citizen, enjoying immunity, commits a crime on the territory of the Russian Federation, the issue of criminal liability of such a person is resolved in accordance with the norms of international law (in particular, pursuant to the Convention on the Privileges and Immunities of the United Nations, 1946; the Convention on Privileges and Immunities of the Specialized Agencies, 1947; the Vienna Convention on Diplomatic Relations, 1961; the Vienna Convention on Consular Relations, 1963).

The category of individuals enjoying immunity includes, for example, the heads of diplomatic missions, members of missions who have diplomatic ranks and their family members, if such family members are not citizens of the receiving state. Other persons enjoying immunity comprise, in particular, the heads of states, governments, heads of foreign policy agencies of states, staff members of a diplomatic mission in charge of administrative-technical service of the mission and their family members living together with them, if such family members are not citizens of the receiving state or do not reside in it permanently, as well as other persons enjoying immunity in accordance with the universally recognized principles and norms of international law and the international treaties of the Russian Federation.

8. The rules of an effective international treaty of the Russian Federation, the consent for the binding nature of which was given in the form of a federal law, have priority of application over the laws of the Russian Federation.

The rules of an effective international treaty of the Russian Federation, the consent for the binding nature of which was given in a form other than a federal law, have priority of application over the bylaws published by the state body or the designated authority that concluded the treaty (Part 4 of Article 15, Articles 90 and 113 of the Constitution of the Russian Federation).

9. In the administration of justice the courts should bear in mind, that pursuant to the substance of Part 4 of Article 15 of the Constitution of the Russian Federation, Articles 369, 379, Part 5 of Article 415 of the Criminal Procedure Code of the Russian Federation, Articles 330, 362-364 of the Civil Procedure Code of the Russian Federation, incorrect application of universally recognized principles and norms of international law and the international treaties of the Russian Federation by a court may constitute grounds for the reversal or amendment of a judicial act. Incorrect application of a norm of international law may occur if the court fails to apply a norm of international law subject to application or, on the contrary, applies a norm of international law which was not subject to application, or if the court misinterprets a norm of international law.

10. It is clarified to the courts that international treaties should be interpreted in accordance with the Vienna Convention on the Law of Treaties of 23 May, 1969 (Section 3; Articles 31-33).

In accordance with item “b” of paragraph 3 of Article 31 of the Vienna Convention, any subsequent practice in the application of a treaty, which establishes the agreement of the parties regarding its interpretation, should be taken into account along with its context for the purposes of interpretation of the treaty.

As a member state of the Convention for the Protection of Human Rights and Fundamental Freedoms, the Russian Federation recognizes the jurisdiction of the European Court of Human Rights as compulsory in issues of interpretation and application of the Convention and its Protocols in the event of presumed breach of provisions of said treaty acts by the Russian Federation, if such a breach took place after their entry into force in respect of the Russian Federation (Article 1 of Federal Law “On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols”, No. 54 of 30 March 1998). This is why the said Convention should be applied by courts with regard to the practice of the European Court of Human Rights in order to avoid any violation of the Convention.

11. The Convention for the Protection of Human Rights and Fundamental Freedoms has its own mechanism, which includes compulsory jurisdiction of the European Court of Human Rights and a systematic supervision of execution of the Court’s judgments by the Committee of Ministers of the Council of Europe. Pursuant to paragraph 1 of Article 46 of the Convention, final judgments concerning the Russian Federation are binding for all state bodies of the Russian Federation, including the courts.

The execution of judgments concerning the Russian Federation implies, if necessary, the obligation of the state to take individual measures, aimed at erasing the violations of human rights, stipulated by the Convention, and the consequences of those violations for the applicant, as well as general measures, aimed at preventing further similar violations. Within their scope of competence, the courts must act so as to ensure the fulfilment of obligations of the state, arising from the participation of the Russian Federation in the Convention for the Protection of Human Rights and Fundamental Freedoms.

If, during the consideration of a case, circumstances are discovered that contributed to the violation of citizens’ rights and freedoms, guaranteed by the Convention, the court may issue a special ruling (or decree), drawing the attention of corresponding organizations and officials to the circumstances and facts of the violation of said rights and freedoms, that require necessary measures to be taken.

12. In the administration of justice the courts must bear in mind, that by virtue of paragraph 1 of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, everyone is entitled to a fair and public hearing within a reasonable time. When calculating the said time-limits in criminal cases, the time of judicial proceedings includes both the time of pre-trial investigation procedure and the time of judicial proceedings as such.

According to the legal positions elaborated by the European Court of Human Rights, the calculation of time-limits begins at the moment when a person is charged with an offence or is detained, put into custody, or other measures of procedural compulsion are taken, and ends when a sentence enters into force or when the criminal case or criminal persecution is withdrawn.

The calculation of time-limits of judicial proceedings in civil cases, pursuant to the substance of paragraph 1 of Article 6 of the Convention, begins at the moment when the statement of claim is received by the court and ends at the moment of execution of the judicial act.

Thus, pursuant to the substance of Article 6 of the Convention, the execution of a court decision is regarded as a constituent part of “judicial proceedings”. In this regard, when considering the issues of postponement, payment in instalments, change of means or manner of execution of a court decision and when considering appeals against the actions of bailiffs, the courts must take into account the need to comply with the requirements of the Convention regarding the execution of court decisions within a reasonable time.

In establishing, to what extent the time of judicial proceedings was reasonable, the complexity of the case, the conduct of the applicant (claimant, defendant, suspect, accused, criminal defendant), the conduct of the state, represented by relevant bodies, is taken into account.

13. When considering civil and criminal cases, the courts should bear in mind that pursuant to Article 47 of the Constitution of the Russian Federation nobody can be deprived of the right for his case to be considered by the court and by the judge, to whose jurisdiction it is referred by virtue of law. In accordance with paragraph 1 of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, everyone, in the determination of his civil rights and obligations or of any criminal charge against him, is entitled to a fair trial by a tribunal established by law.

Proceeding from the judgments of the European Court of Human Rights, with regard to the judicial system of the Russian Federation, this rule extends not only to judges of federal courts and justices of the peace, but also to jurors, who are

citizens of the Russian Federation included into the lists of jurors and drawn to the administration of justice in the manner stipulated by law.

14. When resolving issues regarding the extension of custody, the courts should take into account that, under paragraph 3 of Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms, everyone arrested or detained is entitled to trial within a reasonable time or to release pending trial.

In accordance with the legal positions of the European Court of Human Rights, when custody time of a criminal defendant is calculated, the period starts on the day the suspect (the accused) was put into custody and ends on the day of adoption of a sentence by a court of first instance.

It should be taken into account that a well-founded suspicion, that the person in custody committed a crime, is a necessary condition for the lawfulness of detention. Herewith, such a suspicion cannot be the only reason for a protracted custody. Other circumstances must exist, justifying the isolation of an individual from the society. Such circumstances may include the possibility that the suspect (accused, criminal defendant) may continue criminal activities, or escape from pre-trial investigation or court prosecution, or falsify the evidence in the criminal case, or conspire with the witnesses.

Herewith, the aforementioned circumstances must be real and well-founded, i.e. proven by credible evidence. When extending custody, the court must indicate specific circumstances justifying such extension, as well as the evidence proving the existence of those circumstances.

15. When resolving the issue of putting an accused person into custody as a restrictive measure or the issue of extension of custody, when considering complaints of the accused regarding the illegal actions of officials of pre-trial investigation bodies, courts must take into account the need to ensure the rights of persons held in custody, stipulated in Articles 3, 5, 6 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

When considering motions for freeing a person from custody or appeals against the extension of custody, the courts need to take into account the provisions of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, according to which no one shall be subjected to torture or to inhuman or degrading treatment or punishment.

In its practice of application of the Convention for the Protection of Human Rights and Fundamental Freedoms, the European Court of Human Rights includes into the notion of “inhuman treatment” such treatment, that, as a rule, is of deliberate nature, lasts for several hours or results in real physical harm or severe physical or mental suffering.

Degrading treatment is, inter alia, such treatment that causes a person to experience fear, anxiety and inferiority.

Herewith, a person should not be subjected to suffering or hardship exceeding the unavoidable level of suffering inherent in detention; the person's health and well-being should be secured, given the practical demands of imprisonment.

The aforementioned level is assessed depending on exact circumstances, in particular, taking into account the duration of unlawful treatment, the nature of physical and mental consequences of such treatment. In certain cases, the sex, age and state of health of the person who became subject to inhuman or degrading treatment, is taken into account.

16. If courts encounter difficulties when interpreting the universally recognized principles and norms of international law or international treaties of the Russian Federation, it is recommended to them to use the acts and decisions of international organizations, including the United Nations and its specialized agencies, as well as to contact the Legal Department of the Ministry of Foreign Affairs of the Russian Federation and the Ministry of Justice of the Russian Federation (e.g. in order to clarify any issues regarding the duration of an international treaty, the list of states participating in the treaty, the international practice of its application).

17. It is recommended to the Judicial Department at the Supreme Court of the Russian Federation:

- in coordination with the Representative of the Russian Federation at the European Court of Human Rights, to inform the judges about the case-law of the European Court of Human Rights, especially about the decisions concerning the Russian Federation, by forwarding the authentic texts and their Russian translations;
- to provide the judges with authentic texts and official translations of international treaties of the Russian Federation and other acts of international law on a regular and timely basis.

18. It is recommended to the Russian Academy of Justice to pay particular attention to the studying of the universally recognized principles and norms of international law and the international treaties of the Russian Federation in the process of training, retraining and further education of judges and members of court staff; to analyze the sources of international and European law, to publish the necessary handbooks, commentaries, monographs and other educational, methodological and scientific literature on a regular basis.

19. It is entrusted to the Judicial Chambers on Civil and Criminal Cases, the Judicial Chamber on Cases of the Military of the Supreme Court of the Russian Federation to elaborate, jointly with the Russian Academy of Justice, suggestions

regarding the inclusion of corresponding provisions regarding the application of universally recognized principles and norms of international law and the international treaties of the Russian Federation into earlier adopted rulings of the Plenary Session of the Supreme Court of the Russian Federation.

Chief Justice of the Supreme Court of
the Russian Federation

V.M. Lebedev

Secretary of the Plenary Session, Judge of
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V.V. Demidov