

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

**RULING**

**No. 5, Moscow, 10 October 2003**

**On Application by Courts of General Jurisdiction of  
Universally Recognised Principles and Norms of the International Law and  
International Treaties Entered into by the Russian Federation**

Universally recognised principles and norms of the international law and the international treaties entered into by the Russian Federation, under Article 15 § 4 of the Constitution of the Russian Federation, are a component part of its legal system.

The Federal law No. 101-FZ of 15 July 1995 «On International Treaties Entered into by the Russian Federation» provides that the Russian Federation, advocating the observance of treaty obligations and common norms, confirms its commitment to the basic principle of the international law, i.e. the principle of fair compliance with the international obligations.

International treaties are one of the main means of promoting international cooperation; they facilitate broader international relations with participation of government and non-government organisations, involving subjects of the domestic law entities including natural persons. International treaties play a paramount role in protection of human rights and fundamental freedoms. In that context, it is necessary to further improve judicial activities related to the implementation of provisions of the international law at the domestic level.

For the purpose of ensuring correct and uniform application by the courts of the international law while administering justice, the Plenary Session of the Supreme Court of the Russian Federation hereby resolves to provide the following expounding:

1. In the Russian Federation recognition and guarantees shall be provided for human and civil rights and freedoms in accordance with universally recognised principles and norms of the international law and pursuant to the Constitution of the Russian Federation (Article 17 § 1 of the Constitution of the Russian Federation).

Under Article 46 § 1 of the Constitution everyone shall be guaranteed judicial protection of his or her rights and freedoms.

Proceeding from the above and also proceeding from the provisions of Article 15 § 4, Article 17 § 1, and Article 18 of the Constitution of the Russian Federation, human rights and freedoms, according to universally recognised principles and the norms of the international law, as well as the international treaties entered into by the Russian Federation are of immediate application within the jurisdiction of the Russian Federation. They determine the meaning, content and application of the laws, activities of the legislative and executive branches of government and local self-government, and are secured by the judiciary.

The universally recognised principles of the international law mean fundamental imperative norms of the international law accepted and recognised by the international community of the States as a whole, the deviation from which is unacceptable.

The universally recognised principles of the international law include, *inter alia*, the principle of universal respect for human rights and the principle of fair compliance with international obligations.

A universally recognised norm of the international law should be understood as a rule of conduct accepted and recognised as legally mandatory by the international community of the States as a whole.

The content of the above principles and norms of the international law may be expounded, in particular, in the documents of the United Nations and its specialised agencies.

2. International treaties entered into by the Russian Federation together with the universally recognised principles and norms of the international law a component part of the Russian Federation's legal system (Article 5 § 1 of the Federal Law «On the International Treaties Entered into by the Russian Federation»).

The effective international treaties signed by the USSR in respect to which the Russian Federation continues to exercise the USSR assumed international rights and obligations as a State-successor of the USSR are also a component part of the legal system of the Russian Federation.

According to Article 2 (a) of the Federal Law «On the International Treaties Entered into by the Russian Federation», an international treaty is to be understood as an international agreement concluded by the Russian Federation with a foreign State (or States) or with an international organisation in writing and regulated by the international law regardless whether such a treaty is contained in one or several interrelated documents and irrespective of its specific name (e.g. convention, pact, agreement, etc.).

International treaties entered into by the Russian Federation may be concluded on behalf of the Russian Federation (inter-state treaties), on behalf of the Government of the Russian Federation (inter-governmental treaties) and on behalf of the federal executive agencies (inter-departmental treaties).

3. In accordance with Article 5 § 3 of the Federal Law «On the International Treaties Entered into by the Russian Federation», terms and conditions of the officially published international treaties entered into by the Russian Federation, requiring no adoption of domestic enactments for their application, are of direct effect in the Russian Federation. To implement other provisions of international treaties entered into by the Russian Federation appropriate legal enactments are to be adopted.

The indicia, evidencing the impossibility of immediate application of provisions of an international treaty entered into by the Russian Federation, include, *inter alia*, references, contained in a treaty, to obligations of Contracting States to introduce amendments to the domestic legislation of these States.

While examining civil, criminal or administrative cases a court should directly apply such international treaty entered into by the Russian Federation, which became effective for and binding the Russian Federation and whose provisions do not require adoption of domestic enactments for their application and are capable of giving rise to the rights and obligations for subjects of the domestic law (Article 15 § 4 of the Constitution of the Russian Federation, Article 5 §§ 1 and 3 of the Federal Law «On the International Treaties Entered into by the Russian Federation», Article 7 § 2 of the Civil Code of the Russian Federation).

4. While deciding upon the issue of possibility to apply the treaty norms of the international law, the courts should proceed from the fact that an international treaty enters into force pursuant to the procedure and on the date provided for in the treaty itself or agreed upon by the States, which have taken part in negotiations. 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, Vienna Convention on the Law of Treaties, 1969).

The courts should bear in mind that an international treaty would be subject to application where the Russian Federation has expressed its consent, through competent governmental bodies, to be bound by the international treaty by way of one of the actions listed in Article 6 of the Federal Law «On the International Treaties Entered into by the Russian Federation» (by way of signing the treaty; exchanging documents constituting it; ratifying the treaty; approving of the treaty; accepting the treaty; acceding to the treaty; by any other way agreed upon by the contracting parties), and also provided that the treaty in question has entered into force for the Russian Federation (e.g., Convention for the Protection of Human Rights and Fundamental Freedoms was ratified by the Russian Federation by the Federal Law No 54-FZ of 30 March 1998 and entered into force for the Russian Federation on 5 May 1998, the day of deposition of the instrument of ratification with the Secretary General of the Council of Europe under Article 59 of the Convention).

Proceeding from the meaning of Article 15 §§ 3 and 4 of the Constitution of the Russian Federation, Article 5 § 3 of the Federal Law «On the International Treaties Entered into by the Russian Federation» the courts can directly apply those effective international treaties, which were officially published in the Collection of Legislation of the Russian Federation or in the Bulletin of International Treaties in the manner prescribed by Article 30 of the abovementioned Federal Law. International treaties entered into by the Russian Federation of an inter-departmental nature are published according to the decision of federal executive agencies on whose behalf such treaties were signed, in official publications of these agencies.

The international treaties entered into by the USSR binding the Russian Federation as a State-successor of the USSR have been published in official publications of the Supreme Soviet of the USSR, Council of Ministers (Cabinet of Ministers) of the USSR. The texts of the above treaties have also been published in collections of international treaties entered into by the USSR, but this publication was not official.

Official communications of the Ministry of Foreign Affairs of the Russian Federation on the entry into force of the international treaties signed on behalf of the Russian Federation and on behalf of the Government of the Russian Federation are to be published in accordance with the same procedure that governs the publication of international treaties (Article 30 of the Federal Law «On the International Treaties Entered into by the Russian Federation»).

5. International treaties which have a direct and immediate effect in the legal system of the Russian Federation are applicable in the courts, including the military ones, in determining civil, criminal and administrative cases, in particular:

While examining civil cases, provided that the international treaty entered into by the Russian Federation has set out rules other than those set out by a law of the Russian Federation regulating the relations brought to court for examination;

While examining civil and criminal cases, provided that the international treaty entered into by the Russian Federation has set out rules of court proceedings other than those set out by the law of the Russian Federation on civil procedure or on criminal procedure;

While examining civil and criminal cases, provided that the international treaty entered into by the Russian Federation regulates relations, including the ones with foreign individuals which were brought to court for examination (e.g., while examining cases listed in Article 402 of the Code of Civil Procedure of the Russian Federation, motions on the execution of foreign court judgments, appeals against decisions on extradition of individuals charged with a crime or convicted by a court of a foreign State);

While examining cases of administrative offences, provided that the international treaty entered into by the Russian Federation sets out rules other than those set out by the legislation on administrative offences.

The attention of courts shall be directed to the fact that the consent of the Russian Federation to be bound by the international treaty should be expressed in the form of a federal law, unless the above treaty stipulates rules other than those stipulated by the Federal law (Article 15 § 4 of the Constitution of the Russian Federation, Article 5 §§ 1 and 2, Article 14, Article 15 § 1 (a) of the of the Federal Law «On the International Treaties Entered into by the Russian Federation», Article 1 § 2 of the Code of Civil Procedure of the Russian Federation, Article 1 § 3 of the Code of Criminal Procedure of the Russian Federation).

6. International treaties, whose norms provide indicia of *corpus delicti* of criminally prosecutable acts may not be applied by courts directly because such treaties directly stipulate the obligation of States to ensure compliance with the obligations set out by the treaty by making certain offences punishable under the domestic (national) law (e.g., the Single Convention on Narcotic Drugs of 1961, International Convention against the Taking of Hostages of 1979, the Convention for the Suppression of Unlawful Seizure of Aircrafts of 1970).

Proceeding from Article 54 and Article 71 (o) of the Constitution of the Russian Federation, as well as Article 8 of the Criminal Code of the Russian Federation, a person who has committed a act, having all indicia of a criminal offence set out by the Criminal Code of the Russian Federation, is subject to criminal liability in the Russian Federation.

In this connection, the international law norms envisaging indicia of criminal offences should be applied by courts of the Russian Federation in those instances where the rule of the Criminal Code of the Russian Federation directly sets the need to apply the international treaty entered into by the Russian Federation (e.g., Articles 355 and 356 of the Criminal Code of the Russian Federation).

7. By virtue of Article 11 § 4 of the Criminal Code of the Russian Federation the issue of criminal liability of diplomatic representatives of foreign States and other individuals enjoying immunity in the event of committing an offence by these persons in the territory of the Russian Federation is resolved in accordance with the norms of the international law (in particular, pursuant to the UN Convention on Privileges and Immunities of 1946, the UN Convention on Privileges and Immunities of Specialised Agencies of 1947, the Vienna Convention on Diplomatic Relations of 1961, the Vienna Convention on Consular Relations of 1963).

The category of individuals enjoying immunity includes, for instance, heads of diplomatic missions, members of missions having diplomatic rank and family members thereof, if the latter are not nationals of the host State. Other persons enjoying immunity comprise, in particular, heads of States and of governments, heads of foreign policy agencies of States, staff members of diplomatic missions in charge of administrative and technical services of the mission, family members thereof, family members living together with the said persons, provided they are not nationals of the host State or not residing there permanently, as well as other persons enjoying immunity under universally recognised principles and norms of the international law and the international treaties entered into by the Russian Federation.

8. The rules of the effective international treaty entered into by the Russian Federation, the consent the consent to be bound by which was issued in the form of a Federal Law have priority in their application over the laws of the Russian Federation.

The rules of the effective international treaty entered into by the Russian Federation, the consent to be bound by which was issued in the form of a Federal Law have priority in



their application over the regulatory acts issued by a governmental agency that has concluded the treaty (Article 15 § 4, Articles 90, 113 of the Constitution of the Russian Federation).

9. While administering justice, the courts should bear in mind that, pursuant to meaning of Article 15 § 4 of the Constitution of the Russian Federation, Articles 369, 379, Article 415 § 5 of the Code of Criminal Procedure of the Russian Federation, Articles 330, 362 — 364 of the Code of Civil Procedure of the Russian Federation, an incorrect application by the court of universally recognised principles and norms of the international law and the international treaties entered into by the Russian Federation may serve as a reason to quash or modify a court act. Incorrect application of the norm of the international law may occur in the event when a court failed to apply the norm of the international law subject to application or, on the contrary, a court has applied the norm of the international law which was not subject to application or when a court gave a misinterpretation of the norm of the international law.

10. Courts are to be expounded that an interpretation of an international treaty should be carried out in accordance with the Vienna Convention on the Law of the Treaties of 23 May 1969 (Part III, Section 3; Articles 31 — 33).

In accordance with Article 31 § 3 (b) of the Vienna Convention, in interpreting an international treaty, one should, together with its context, take into account any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation.

The Russian Federation, as a State-signatory of the Convention for the Protection of Human Rights and Fundamental Freedoms recognises the jurisdiction of the European Court of Human Rights as binding with respect to interpretation and application of the Convention and Protocols thereto in the event of an alleged breach by the Russian Federation of provisions of these compacts when the alleged breach has taken place after their entry into force with respect to the Russian Federation (Article 1 of the Federal Law «On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto» No. 54-FZ of 30 March 1998). For that reason, the application by courts of the above Convention should take into account the case-law of the European Court of Human Rights to avoid any breach of the Convention on Human Rights and Fundamental Freedoms.

11. The Convention on Human Rights and Fundamental Freedoms has a mechanism of its own, which includes a compulsory jurisdiction of the European Court of Human Rights and a systematic supervision over the execution of the judgments of the Court by the Committee of Ministers of the Council of Europe. In accordance with Article 46 § 1 of the Convention, these judgments with regard to the Russian Federation, rendered finally, bind all State bodies of the Russian Federation including the courts.

The implementation of the judgments related to the Russian Federation presupposes, whenever necessary, the obligation on the part of the State to take individual measures with a view to eliminate violations of human rights secured by the Convention and the effects of these violations on the applicant, as well as general measures with a view to prevent repetition of such violations. The courts, within the scope of their competence, should act in such way as to ensure the implementation of obligations of the State stemming from the participation of the Russian Federation in the Convention for the Protection of Human Rights and Fundamental Freedoms.

If during court examination of a case the circumstances were revealed that contributed to the violation of the rights and freedoms of citizens guaranteed by the Convention, a court is empowered to render a special finding (or a ruling), which would draw the attention of the relevant organisations and officials to the circumstances and facts of violation of the above rights and freedoms requiring that necessary measures be taken.

12. While carrying out court proceedings, the courts should take into account that, by virtue of Article 6 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, everyone is entitled to a court hearing within a reasonable time. While calculating the above time in dealing with criminal cases the court proceedings extends both to pre-trial investigation procedure and trial proceedings in court as such.

According to legal approaches worked out by the European Court of Human Rights the calculation of the time limits starts at the moment when a formal criminal charge is brought against a person or when a person is arrested, or taken into custody, or other measures of procedural enforcement have been taken and ends when a criminal judgment becomes final or criminal proceedings or criminal prosecution was terminated.

The calculation of the time of court proceedings in civil cases, in the meaning of Article 6 § 1 of the Convention, begins at the moment when a lawsuit has been filed and ends when the court judgment has been executed.

Thus, in the meaning of Article 6 of the Convention, the execution of a court judgment is viewed as a component of «court proceedings». Considering the above, while addressing issues of stay, deferral or modification of the way and procedure of the execution of a court judgment and while reviewing complaints against court bailiffs' actions, the courts should take into account the need to comply with the requirements of the Convention related to the execution of court judgments within a reasonable time.

In establishing to what extent the time period of court proceedings was reasonable, consideration should be given to the complexity of a case, conduct of an applicant (a plaintiff, civil defendant, suspect, and the accused), and conduct of the State represented by relevant agencies.

13. While examining civil and criminal cases, the courts should bear in mind that, pursuant to Article 47 of the Constitution of the Russian Federation, no one can be denied the right for having her or his case examined by the court and by the judge, to whose jurisdiction the case is referred to by law. Under Article 6 § 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms, in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a tribunal established by the law.

Proceeding from 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 the jurors, who are the citizens of the Russian Federation, included into the list of the jurors and called upon to administer justice in accordance with the statutory procedure.

14. The courts, in determining issues related to the extension of the detention period, should take into account that under Article 5 § 3 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 legal approaches of the European Court of Human Rights, while establishing the duration of a criminal defendant's detention period, the time period is taken into consideration that starts on the day the suspect (the accused) was taken into custody and ends as on the day when the judgment was passed by the first-instance court.

It should be taken into account that the presence of a reasonable suspicion that a person committed to custody has committed a criminal offence, serves as a *sine qua non* condition for the arrest to be considered as a lawful one. At the same time, such a suspicion cannot remain to be the only ground for a continued detention. There must be other circumstances that could justify the isolation of an individual from the society. Such

circumstances may include *inter alia* a possibility that the suspect or the accused may continue further criminal activity or abscond from pre-trial investigation or court or else falsify the evidence on the criminal case, or conspire with witnesses.

The above circumstances should be actual and well-founded, i.e. be proved by a credible evidence. In the event of extension of detention the courts should refer to specific circumstances justifying the extension of such time limit and to evidence supporting the existence of such circumstances.

15. When taking a decision to commit the accused persons to custody as a prevention measure or to extend the detention, determining the accused persons' complaints against unlawful actions of officials of the preliminary investigation agencies, the courts should take into account the need to observe the rights of persons kept in custody specified by Articles 3, 5, 6 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

When taking a decision on a request to be released from custody or a complaint against the extension of the detention, the court has 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 the European Court of Human Rights' case-law applying the Convention for the Protection of Human Rights and Fundamental Freedoms «inhuman treatment» covers instances such treatment, as a rule, is of a deliberate nature, extends over several hours or when as a result of such treatment a human being was inflicted a real physical damage or a serious physical or psychological suffering.

One should bear in mind that, under Article 3 of the Convention and requirements contained in judgments of the European Court of Human Rights, the conditions of detention of the accused should be compatible with the respect for human dignity.

The treatment degrading human dignity is considered to be, *inter alia*, a treatment that causes a feeling of fear, anxiety and one's own inferiority in an individual.

At the same time, the individual should not be caused deprivation and sufferings to a greater degree than the level of sufferings which is inevitable in case of a deprivation of freedom while health and well-being of the individual should be guaranteed considering practical requirements of the detention regime.

The above mentioned level is assessed on the basis of specific circumstances, in particular, the duration of an unlawful treatment of a person, the nature of physical and psychological effects of such treatment. In certain cases, sex, age and health condition of an individual who was subjected to inhuman or degrading treatment are taken into account.

16. In case difficulties arise in interpreting universally recognised principles and norms of the international law, the international treaties entered into by the Russian Federation, the courts are recommended to use acts and decisions of international organisations, including the UN organs and its specialised institutions, and also to apply to the Legal Department of the Ministry of Foreign Affairs of the Russian Federation, to the Ministry of Justice of the Russian Federation (e.g., to comprehend properly the issues related to the duration of validity of an international treaty, the composition of the States-participants in the treaty, international practice of its application).

17. It shall be recommended to the Judicial Department under the Supreme Court of the Russian Federation:

In co-ordination with the Representative of the Russian Federation at the European Court of Human Rights, to inform judges on the case-law of the European Court of Human Rights, especially with respect to judgments regarding the Russian Federation, by way of distributing authentic texts and their Russian translations;

To provide judges, on a regular and timely basis, with authentic texts and official translations of the international treaties entered into by the Russian Federation and other acts of the international law.

18. It shall be recommended to the Russian Academy of Justice, when arranging the academic activity to train judges and staff members of the court apparatus and to have them undergo continuing legal education to pay special attention to the studies of universally recognised principles and norms of the international law and the international treaties entered into by the Russian Federation, to analyse, on a regular basis, the sources of the international and European law, to publish necessary practical manuals, comments, monographs and other training, methodological and academic literature.

19. The Judicial Chambers on Civil and Criminal Cases, the Military Chamber of the Supreme Court of the Russian Federation shall be commissioned with drafting proposals, jointly with the Russian Academy of Justice, to supplement previously adopted rulings of the Plenary Session of the Supreme Court of the Russian Federation with relevant provisions on application of the universally recognised principles and norms of the international law and the international treaties entered into by the Russian Federation.

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