EU Constitutional Standardization and Transformation Processes

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Abstract

International organizations significantly influence processes of standardization, unification and bringing closer national legislation of their member states. Standardization is aimed at changing and supplementing national legislation, primarily constitutional, with the view of its unification. Regulatory force of international acts of such international organizations as the European Union, the CIS, the Eurasian Economic Union, etc. is embodied in acts that they adopt, but it depends on the founding states. When a state joins an international organization, it has to align its internal legislation with numerous international acts. This is particularly so if this organization has taken the path of reaching a closer union and interdependence of its members. Such process can result in quite significant intrusion into the sphere of internal competence.

The author of this article analyses these standardization and transformation processes related to national constitutions and the EU law. The article illustrates ongoing tendencies in transformation processes in this sphere in Ireland, France, Germany and Russia. Standardization of national legislation by international intergovernmental organizations undoubtedly evidences gradual expansion of their powers. This process favorably impacts comprehensive development of the uniting states, facilitates formation of a strong society and civilization, improves legal regulation through the experience of other states and helps to fill in legal gaps and increase the quality of law enforcement.

However, apart from positive qualities, integration has its negative sides. For example, legal dependence and "enchainment" of the states by the institutions and norms of intergovernmental associations are increased. Difficulties arise in the process of "alignment" of international and constitutional institutions. Problems of correlation of national and international legal acts, resolving differences, and smoother implementation of international norms within the framework of national legal systems, receive the first priority. It is for this reason that the author proposes an initiative to create model laws for member states of intergovernmental organizations aiming at implementation of acts of such organizations at the national level.

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Historical and Political Aspects

From the mid-eighties, the European Communities and the European Union have adopted more than 12,000 regulatory legal acts. Lawmaking activity has been constantly increasing both in relation to mandatory and recommendatory acts. At the same time, recommendatory acts have been increasingly forming public opinion, as needed, and have been creating preconditions for establishment of international law norms on their basis. We should not forget about international customs as well which are the complementary tool of international legal regulation. Their number grows each year and sometimes they require a full-scale ratification (for example, the European Social Charter of 1996).

During the last several years the European Union has been declaring the supremacy of its law over national constitutions. EU acts can have greater legal force and compete, and even conflict, with constitutional provisions. This situation also exists in such organizations as Euratom, the EEC, the ECSC, etc.
Standardization Processes as Consequences of Formation of the European Union

Membership in the European Union is not only followed by the increasing lawmaking process and transformation of national legislation. Member states have been changing and amending provisions of national constitutions on a more frequent basis, particularly those chapters and sections that regulate issues of membership in intergovernmental associations and implementation of their acts.

The German Constitution contained a provision allowing the state to delegate its sovereign powers to intergovernmental organizations by law even before the creation of the European Union (paragraph 1 of Article 24). Moreover, Article 25 determined that general rules of international law were an integral part of federal law and that they took precedence over the laws of the state. Such rules directly created rights and duties for the inhabitants of the federal territory.

Creation of the European Union resulted in changes in Article 23 of the Basic Law of the FRG. This Article authorized transferring sovereign powers to the European Union by a law with the consent of the Bundesrat (paragraph 1).

Nonetheless, paragraph 3 of Article 23 of the Basic Law of the FRG contains the following reservation: "Before participating in legislative acts of the European Union, the Federal Government shall provide the Bundestag with an opportunity to state its position. The Federal Government shall take the position of the Bundestag into account during the negotiations. Details shall be regulated by a law."

Most constitutions of European countries establish priority of international law over national laws in legislation of such countries. As a result, the Constitution of Ireland was corrected so that its provisions would not obstruct the application of the EU law in the territory of the country.

For example, Article 29.5 (2010) and Article 29.6 (2015) of the Constitution of Ireland were formulated in the following way: "No provision of this Constitution invalidates laws enacted, acts done or measures adopted by the State… that are necessitated by the obligations of membership of the European Union or the European Communities…"

The French Constitution has undergone the most extensive transformation in connection with the creation of the European Union. After the conclusion of the Maastricht Treaty on 7 February 1992 (the Treaty on European Union) the Constitution of France was amended to include a special Title number XV "On the European Communities and the European Union". This Title now contains a number of fundamental provisions regulating France's EU membership: for example, Article 88-2 provides for the principle of reciprocity, being a condition under which France agrees to delegate the required powers for the creation of the economic and financial union. Therefore, the deepening of the European integration and recognition of this fact on the constitutional level can be observed in France.

According to a new Article 49bis of the Constitution of the Grand Duchy of Luxembourg the exercise of the attributions reserved by the Constitution to the legislative, executive and judicial powers may be temporarily vested by treaty in institutions of international law.

Thus, when a state joins an intergovernmental association, this usually implies delegation of sovereign powers to supranational bodies.

At the same time, constitutions of, for example, Italy and the Netherlands have not changed as a result of joining the European Union, and they contain provisions regulating the fundamentals of transfer of a part of state powers to intergovernmental associations, without any specific reference to the European Union.
Thus, it can be observed that standardization of national legislation by international intergovernmental organizations in relation to basic laws is carried out differently. However, the general approach is, in essence, the same.

Nevertheless, it should be borne in mind that delegation of sovereign powers to the bodies of an intergovernmental association should not diminish guarantees of rights and freedoms offered by the state. Constitutional principles establishing the right for preservation of the fundamental constitutional values cannot be transformed in the course of delegation of powers to supranational bodies. Therefore, there is a need for a protection mechanism providing for preservation of own national and cultural, and sometimes political and economic, identity and ensuring the supremacy of national sovereignty.

Integration practice of intergovernmental associations apparently also influences, in terms of standardization, those states that are not members of the European Union, for example, the Russian legislator. Let's analyze Russian experience in more detail, as it is of interest to the author of this research from the point of view of a stricter protection of Russian own sovereignty in relations with international intergovernmental organizations.

**Russian Integration Experience**

For a long time during the Soviet history national law was recognized as having priority. When the Fundamentals of Civil Legislation of the USSR and the Union Republics were adopted, the novel principle of priority of international treaties was introduced. This principle has gradually extensively developed in other areas of law as well.

For example, Article 15 of the Russian Constitution introduced the rule that established priority of international law over national law.

Article 79 of the Russian Constitution of 1993 authorizes delegation of the powers of the Russian state at the international level: "The Russian Federation may participate in interstate associations and transfer to them part of its powers…” Since Article 79 is in Chapter 3 "The Federal Structure” of the Constitution, the Russia's right to participate in intergovernmental associations is viewed as an element of its constitutional and legal status. Delegation of powers is voluntary and can be carried out only in accordance with an international treaty. According to Article 79 and Article 106(d) of the Constitution and Article 15(1-e) of the Federal Law On International Treaties of the Russian Federation of 15 July 1995 No. 101-FZ, international treaties on participation of Russia in intergovernmental associations must be ratified by the Russian parliament – the Federal Assembly of the Russian Federation.

The need to ratify international treaties by the Federal Assembly does not exclude participation of the Russian Constitutional Court in this procedure. International treaties that has not entered into force may be reviewed by the Russian constitutional review body (Article 125(2-d) of the Russian Constitution).

A precise list of intergovernmental associations to which Russia can delegate its powers is not specified in the Basic Law. Therefore, the number of such associations can be unlimited, regardless of their level and geographical location. However, the Russian Constitution provides for limits of delegation of powers: such actions should not restrict human and citizen rights and freedoms and contradict to the fundamentals of the constitutional regime of the Russian Federation. The Russian legislator quite actively addresses the negative side of integration processes, i.e. the conflict between intergovernmental integration and preservation of state sovereignty.

The Constitution of the Russian Federation prefers sovereignty. This conclusion is based on provisions of the current version of the Russian Constitution, namely on Article 4 on state sovereignty in Chapter 1 "The Fundamentals of the Constitutional System”, and practice of the Constitutional Court. The possibility of Russia's participation in intergovernmental associations, with
all the consequences that derive from that, in this sense is secondary to the idea of the supremacy of state power in the whole territory of the Russian Federation.

It should be noted that all international legal acts "are included" in the Russian legal system only after their ratification, i.e. approval and accession. Such are the constitutionally mandated requirement and procedures established in Articles 15(4), 86(b), 106(d) of the Russian Constitution and in the Federal Law On International Treaties of the Russian Federation.

Another constitutional norm should be pointed out in this respect. According to Article 125(6) international treaties of the Russian Federation that do not conform to the Russian Constitution shall not be given effect and applied. This implies possible cases in the Constitutional Court concerning constitutionality of federal laws on ratification. However, there have been no such cases yet.

This is also evidenced by practice of the Russian Constitutional Court, particularly by its Resolution No. 21-P of 14 July 2015 (St. Petersburg) which states that unconditional implementation by Russia of decisions of an intergovernmental body adopted on the basis of an international treaty contradicting to the Constitution of the Russian Federation can result in violation of its provisions. Provisions on state sovereignty and the supremacy of the Constitution do not authorize implementation into the state's legal system of international treaties participation in which can lead to restriction of human and citizen rights and freedoms or to any encroachments on the fundamentals of the constitutional regime of the Russian Federation.

From this point of view if the European Court of Human Rights, when interpreting any provision of the Convention for the Protection of Human Rights and Fundamental Freedoms in a case, gives a notion used in such provision a meaning which is different from its usual meaning or gives interpretation contradictory to the object and goals of the Convention, then the state in relation to which the judgment in this case has been adopted has the right to refuse to implement such judgment, as overstepping the limits of obligations that the state voluntary assumed during ratification of the Convention. Accordingly, a judgment of the European Court of Human Rights cannot be considered as mandatory if, as a result of interpretation of a specific provision of the Convention for the Protection of Human Rights and Fundamental Freedoms, on which this judgment is based, carried out in violation of the general rule of interpretation of treaties, the meaning of this provision will be in conflict with peremptory norms of general international law (Jus cogens), among which are, undoubtedly, the principle of sovereign equality and respect of rights attributed to sovereignty, and the principle of non-interference into internal affairs of states. We should not forget about the much-talked-about Judgment of the European Court of Human Rights in the case of Konstantin Markin v. Russia as well.

Nonetheless, the Russian Constitution provides for a possibility to transfer part of powers to integrational and allied associations, commonwealths and international organizations. Broad legal formula of Article 79 of the Constitution makes it possible to embrace all now known and potential future intergovernmental associations. Delegating powers to such associations is a manifestation of Russia's external functions and a necessary element of its constitutional and legal status.

Thus, participation of a state in an intergovernmental association usually implies delegation of sovereign powers to supranational bodies of such international organizations. At the same time, national constitutions may regulate this issue differently. As we can see, there is no single approach among the analyzed countries to the issue of delegation of a part of state powers to the EU, whereas the Russian constitutional legislation has developed a mechanism of protection of its own supremacy and inviolability of state sovereignty, while making it possible to create legal grounds for Russia's participation in all sorts of intergovernmental associations with the view of cooperating in political, economic, military and humanitarian fields. The problem of resolving conflicts between international and national legal norms becomes ambiguous and unclear. Recognition of the priority of the former according to Article 15(4) of the Russian Constitution does not give sufficient grounds to resolve this problem. One of general alternatives could be the development and adoption of the Federal Law On Procedure of Implementation of International Legal Acts into the Legal System of the Russian
Federation. In our view, it is exactly in this Federal Law that the procedure of publication and bringing into force international acts, powers of federal and regional bodies, methods of implementation of international acts, the procedure of alignment of national acts in accordance with such international acts, and procedures for resolving conflicts of laws, could be regulated.

Conclusion

Many researchers note the growing dependence of states on each other, their increasing needs in cooperation and approving different actions. This is not doubted, as integration in the modern world has become the basis of a strong and progressively developing state.

The following definition of Eurasian standardization has been formulated in the course of research: a voluntary association of two or more economically independent entities joined by establishing different ties between them documented in a civil law agreement with the purpose of effective mutual cooperation and implementation of desired goals in the territory of Eurasia.

This process favorably impacts comprehensive development of the uniting states, facilitates formation of a strong society and civilization, improves legal regulation through the experience of other states and helps to fill in legal gaps and increase the quality of law enforcement. However, apart from positive qualities, integration has its negative sides. For example, legal dependence and "enchainment" of the states by the institutions and norms of intergovernmental associations are increased. Difficulties arise in the process of "alignment" of international and constitutional institutions. Problems of correlation of national and international legal acts, resolving differences, and smoother implementation of international norms within the framework of national legal systems, receive the first priority. Unfortunately, peculiarities of universal and regional structures and such associations of states as communities, commonwealths, confederations, and unions are not always fully taken into account. This creates difficulties in performance of obligations imposed by founding treaties on member states. Moreover, standardization becomes the reason for introducing changes into national constitutional legislation. There are numerous examples in this respect.

In view of this, the author proposes an initiative to create model laws for member states of intergovernmental organizations aiming at implementation of acts of such organizations at the national level.

References


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