RUSSIAN LEGAL ORDER AND THE LEGAL ORDER OF THE EURASIAN ECONOMIC UNION: AN UNEASY RELATIONSHIP

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Eurasian integration has created a new legal order – the so-called "Union law" of the Eurasian Economic Union (EAEU). This legal order has its own narrative, principles, hierarchy of rules, and innovations such as the direct applicability of decisions of its regulatory body. Russian legal order is generally accommodating towards international law, which is equally applicable to Union law. However, the recent practice of the Russian Constitutional Court has claimed that Russia can set aside international obligations based on national constitution, which indirectly targets the viability of the EAEU legal order. This is further complicated by the Eurasian judiciary, which, as the main interpretative authority within the integration, has tried to take on an activist role, somewhat borrowing approaches from the European Union. In its turn, the Russian Constitutional Court has voiced its differences in certain approaches. This variability of practices and approaches clearly undermines the "unity" of the EAEU legal order and the interweaving of national and regional legal frameworks. This article analyses the relationship of the two legal orders to assess the possibilities for tensions between them. It points out the sources of such tensions, which lie in certain indeterminacies within the EAEU legal order, temptations to assert power, and recent far-reaching practices of the Russian Constitutional Court.

Keywords: Court of the Eurasian Economic Union; Russian Constitutional Court; constitutional law; legal order; Eurasian integration.

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Introduction

Russia is a founding member of the Eurasian Economic Union (EAEU) and is deeply entrenched into Eurasian integration. The legal framework of Eurasian integration by which Russia is bound is enormous.[1] As a founding member, Russia took an active part in drafting the EAEU Treaty – a process which required alignment with the generally recognised principles of international law, national legislation of Member States, taking into account international experience, but first and foremost with the national constitutions.[2] Therefore, in principle, tensions between the legal orders of the EAEU and Member States should have been minimized from the beginning. However, this is not necessarily so. In particular, certain practices of both the Eurasian and Russian judiciary are not unequivocal. Therefore, this article is aimed at unpacking possible tensions between the two legal orders – the Russian legal order and the legal order of the EAEU – and discovering sources of such tensions. The relevant issues lie primarily in the field of constitutional law, which will be of immediate concern in this article.

The issue of tensions between these two legal orders is pertinent given that the EAEU is a relatively new international organization of regional economic integration, and its legal order is being shaped. Even though research about the organization is developing fast, studies of issues of interrelations of the two legal orders are rather scarce. However, the foundations of the legal order have been established with the entry of the EAEU Treaty into force on January 1, 2015, which provides considerable

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[1] The EAEU Treaty has codified almost 100 international agreements concluded within the Eurasian integration process, most of them codified into the EAEU Treaty. See Codification of the Legal and Contractual Basis of the CU and SES (May 1, 2017), available at http://www.eurasiancommission.org/en/act/integr_i_makroec/dep_razv_integr/Pages/codification.aspx.

[2] Решение Комиссии Таможенного союза от 22 июня 2011 г. № 902 "О Рабочей группе по кодификации международных договоров, составляющих договорно-правовую базу Таможенного союза и Единого экономического пространства" [Decision of the Commission of the Customs Union No. 902 of June 22, 2011. On the Working Group on Codification of International Agreements, Forming the Legal Basis of the Customs Union and Single Economic Space] (May 1, 2017), available at http://www.tsouz.ru.

ground for analysis.[3] Moreover, although there is very limited jurisprudence of the EAEU Court, this article will rely on the jurisprudence of the preceding court – the Court of the Eurasian Economic Community (hereinafter – EurAsEC) – as certain cases can shed some light on the existent and possible future tensions between the legal orders. The EAEU Court comes in place of the EurAsEC Court, which was a judicial body of the now defunct Eurasian Economic Community, and of the Customs Union and the Single Economic Space.[4] Although the issue of succession between the two courts is somewhat blurred (the initial idea to ensure full legal succession was abandoned[5]), the case-law of the EurAsEC Court remains in force.[6]

Further pertinence of the topic is explained by a number of recent rulings handed out by the Constitutional Court of the Russian Federation, in particular those related to the European Court of Human Rights (hereinafter – ECtHR).[7] Although such rulings did not concern the EAEU, their indirect effect can be significant, as will be explored.

In order to achieve the stated aim, each of the article sections tries to identify sources for both direct and indirect tensions (in fact, the duality of tensions is a recurring theme throughout the article). The first section is devoted to unpacking the EAEU legal order in terms of its structure and functioning. The second section looks into how Russian law sees external law, including the law of the EAEU. The third section analyses the place and role of the Eurasian judiciary and the changes in the powers that it endured as possible sources for tensions. The fourth section looks deeper into case-law and covers the relations of national courts and the Eurasian judiciary.

Apart from the two legal orders, which are in the focus of the article, certain interventions are made into a third one – the legal order of the European Union (EU). One of the reasons is that it has been constantly reiterated on various levels,

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[3] Treaty on the Eurasian Economic Union of May 29, 2014 (May 1, 2017), available at https://docs.eaeunion.org/docs/en-us/0003610/itia_05062014.

[4] Смирнов Е.А. О суде [Evgeny A. Smirnov, *About the Court*] (May 1, 2017), available at http://sudevrazes.org/main.aspx?guid=18751.

[5] Евразийская интеграция: роль Суда [*Euroasian Integration: The Role of the Court*] 131 (T.N. Neshataeva (ed.), Moscow: Statute, 2015).

[6] Договор о прекращении деятельности Евразийского экономического сообщества от 10 октября 2014 г. [Treaty on Termination of Functioning of the Eurasian Economic Community of October 10, 2014], Art. 3, Para. 3 (May 1, 2017), available at http://www.consultant.ru/document/cons_doc_LAW_170016/.

[7] Постановление Конституционного Суда РФ от 19 января 2017 г. № 1-П, Российская газета, 3 февраля 2017 г., № 7190(24) [Ruling of the Constitutional Court of the Russian Federation No. 1-P of January 19, 2017, Rossiyskaya Gazeta, February 3, 2017, No. 7190(24)]; Постановление Конституционного Суда РФ от 14 июля 2015 г. № 21-П, Вестник Конституционного Суда РФ, 2015, № 5 [Ruling of the Constitutional Court of the Russian Federation No. 21-P of July 14, 2015, Bulletin of the Constitutional Court of the Russian Federation, 2015, No. 5].

including the highest political ones, that the EAEU follows the best practices of the EU.[8] However, apart from declarations, the EAEU and EU legal orders have similar features indeed, and the EAEU Court has been regularly citing the case-law of the Court of Justice of the European Union (CJEU). Therefore, where necessary, some comparison will be made to the EU.

1. The EAEU Legal Order

From a theoretical perspective, a legal order can be defined as a totality of legal rules regulating a certain community.[9] However, such a totality only constitutes an order if the norms constitute a unity.[10] Moreover, certain hierarchy between legal rules is "[i]nherent in the concept of the legal order."[11] The notion of a legal order was initially primarily associated with states, therefore, with regard to international organizations, which started appearing since the 19th century, it was not immediately clear that they can have their own legal order.[12] Such recognition was developed only in the 20th century, and has only become definitively accepted since 1945.[13] Such a legal order, with a basis in the constituent instrument, is both distinct from the legal orders of Member States and from the international legal order.[14]

Turning to the EAEU, its legal order received the name of the "law of the Union," as it is referred to in the EAEU Treaty. Although the notion is not defined, according to Art. 6 it consists of the EAEU Treaty itself, international agreements in the EAEU framework, international agreements of the EAEU with third parties, as well as decisions and orders of the EAEU institutions. Recommendations, not being obligatory, do not form part of the law of the Union. The major innovation within the law of the EAEU is the principle of direct applicability.[15] In a majority

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[8] *See* Guillaume Van der Loo & Peter Van Elsuwege, *Competing Paths of Regional Economic Integration in the Post-Soviet Space*, 37(4) Review of Central and East European Law 422, 433 (2012). *See also* Roman Goncharenko, *Russia Plans Eurasian Union on EU Model*, DW, December 26, 2011 (May 1, 2017), available at http://www.dw.de/russia-plans-eurasian-union-on-eu-model/a-15615047.

[9] Henry G. Schermers & Niels Blokker, *International Institutional Law: Unity within Diversity* 1140 (Leiden: Martinus Nijhoff Publishers, 2003).

[10] Hans Kelsen, *The Concept of the Legal Order*, 27(1) American Journal of Jurisprudence 64 (1982).

[11] Schermers & Blokker 2003, at para. 1341.

[12] *Id.* Para. 1142.

[13] *Id.*

[14] However, even though the separateness of the legal order of international organizations from the legal order of states is generally accepted, there is more discussion regarding it being separate from the international legal order. *See* on both issues *id.* Para. 1142 and relevant footnotes.

[15] Initially, it was introduced with the establishment of the Commission of the Customs Union in 2011.

of past cases, acts had to be implemented using national procedures in order to have some legal effect. Currently, certain acts do not require any procedures for implementation, so in theory, they become part of national law immediately. The EAEU Treaty gives such effect to decisions of the main regulatory body of the EAEU – Eurasian Economic Commission (hereinafter – Commission), – which are described as acts that have a normative character and are *directly applicable* on the territory of Member States.[16]

However, the overall effect of EAEU law within the national legal orders of Member States is unclear. The EAEU Treaty does not specify the relation of legal force between Union acts and national legislation. The regulation on the Eurasian Economic Commission provides that decisions of the Commission are *binding* on Member States.[17] However, there is nothing on supremacy of Commission decisions over national law. To compare, one of the drafts of the EAEU Treaty had the following provision:

> legal acts of the Union shall be *binding*, shall have *direct applicability* on the territories of Member States, and shall have *priority* over the legislation of Member States.[18]

Therefore, the drafters of the final version of the EAEU Treaty did not only decide to limit themselves to the binding nature of the Commission decisions instead of all EAEU legal acts, but also have decided to exclude the notion of *priority* over national law. This means the final EAEU provisions are limited to the binding character and direct applicability of certain acts, but their legal consequences are not described. This means that priority (or supremacy) is not regulated by the Treaty.

Therefore, formally, there is little space for tensions posed by the EAEU legal order, unless supremacy is introduced into the EAEU Treaty. However, as it is known from the EU practice, supremacy was not defined by the founding treaties, but was established by the European Court of Justice (hereinafter – ECJ) teleologically.[19] Similarly, supremacy could be identified by the EAEU Court, although the ability of the EAEU Court to do a similar job has been diminished as compared to its predecessor:

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[16] Pt. 3 of the Regulation on the Eurasian Economic Commission, Annex 1 to the Treaty on the Eurasian Economic Union of May 29, 2014 (May 1, 2017), available at https://docs.eaeunion.org/docs/en-us/0003610/itia_05062014.

[17] *Id.* Pt. 13, para 1.

[18] Проект договора о Евразийском экономическом союзе [Draft Treaty on the Eurasian Economic Union] (May 1, 2017), available at http://kazenergy.com/ru/2012-09-05-04-11-04/2011-05-13-18-20-44/10777-2013-09-10-07-03-15.html.

[19] *See, e.g.*, Bruno de Witte, *Direct Effect, Primacy, and the Nature of the Legal Order* in *The Evolution of EU Law* 323–362 (P. Craig & G. de Búrca (eds.), Oxford: Oxford University Press, 2011).

it has lost a number of powers, the biggest being the preliminary ruling procedure.[20] However, this could also be done by a joint interpretation of Member States.[21]

Effective functioning of a legal order requires mechanisms for its maintenance and enforcement. Therefore, essential part of the EAEU legal order is the permanent judicial body – the EAEU Court, – since its aim is ensuring uniform application of Union law by Member States and institutions.[22] Although there are doubts that the EAEU Court is able to achieve its aim, a separate judicial authority responsible for the legal order is crucial.[23]

2. The Russian Legal Order vis-à-vis the EAEU Legal Order

The aforementioned description of the EAEU legal order calls for two major inquiries into the relations with the Russian legal order: the effect of EAEU treaties (i.e. the EAEU founding treaty, international agreements concluded in the EAEU framework and international agreements of the EAEU with third parties) and the directly applicable decisions of the Commission.

To start with, Russian participation in the EAEU is based on Art. 79 of the Constitution:

> The Russian Federation may participate in interstate associations and transfer to them part of its powers according to international treaties and agreements, if this does not involve the limitation of the rights and freedoms of man and citizen and does not contradict the principles of the constitutional system of the Russian Federation.[24]

This provision talks about Russia's participation in international organizations in a wide sense. It should not be understood as giving a *right* to participate in international organizations, since it is hard to imagine a sovereign country not being able to join an international organization without an explicit provision for such

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[20] Maksim Karliuk, *The Limits of the Judiciary within the Eurasian Integration Process* in *The Eurasian Economic Union and the European Union: Moving toward a Greater Understanding* 171 (A. Di Gregorio & A. Angeli (eds.), The Hague: Eleven International Publishing, 2017).

[21] Pt. 47 of the Statute of the EAEU Court provides that the Court's "clarifications of provisions of the Treaty" do not deprive the Member States of the right for joint interpretation. *See* the Statute of the Court of the Eurasian Economic Union, Annex 2 to the Treaty on the Eurasian Economic Union of May 29, 2014 (May 1, 2017), available at https://docs.eaeunion.org/docs/en-us/0003610/itia_05062014.

[22] *Id.* Pt. 2.

[23] *See* Karliuk 2017. *See also* further in the article.

[24] Конституция Российской Федерации, принята всенародным голосованием 12 декабря 1993 г., Собрание законодательства РФ, 2014, № 31, ст. 4398 [Constitution of the Russian Federation enacted by the national referendum on December 12, 1993, Legislation Bulletin of the Russian Federation, 2014, No. 31, Art. 4398].

a right in its constitution, especially as not all countries have such a provision. This is especially so given the fact that Russia became a member of a number of international organizations prior to the entry into force of the Constitution.[25] Moreover, absence of the explicit "right" to withdraw from an international organization does not mean that the country cannot pursue this option. Therefore, this provision's focus is other than permission. The focus is rather on the transfer of powers and conditions thereof, which will be crucial in further examination. Thus, there are three conditions under which Russia can join an international organization and transfer powers. First, the transfer of powers is only possible by means of an international agreement (ratified by a federal law[26]). Second, such an international agreement cannot limit the rights and freedoms of individuals. Third, the international agreement must not contradict the principles of the constitutional system. Indeed, limitations of transfer of powers are common, e.g. among the countries that joined the EU. Thus, the Danish constitution specifically required that the powers vested in the constitution might only be transferred to a specific extent.[27] In fact, the limited character of transfer was a pre-requisite in the majority of the European countries.[28]

It must be noted that the Russian Constitution and other constitutional norms do not distinguish the EAEU in any respect, which could have given the latter's legal order some additional weight or value. For instance, in the case of the EU, a number of EU Member States, such as Estonia, France, Germany, Latvia and Lithuania make such distinctions.[29] It must be concluded from this that general rules applicable to

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[25] Комментарий к Конституции Российской Федерации [Commentaries on the Constitution of the Russian Federation] (L.V. Lazarev (ed.), Moscow: Novaya pravovaya kul'tura, 2009) (May 1, 2017), also available at http://constitution.garant.ru/science-work/comment/5366634/chapter/3/#block_79.

[26] Федеральный закон от 15 июля 1995 г. № 101-ФЗ "О международных договорах Российской Федерации", Собрание законодательства РФ, 1995, № 29, ст. 2757 [Federal law No. 101-FZ of July 15, 1995. On International Treaties, Legislation Bulletin of the Russian Federation, 1995, No. 29, Art. 2757], Art. 15.

[27] Magdalena M. Martin Martinez, *National Sovereignty and International Organizations* 122 (The Hague: Kluwer Law International, 1996).

[28] *Id.*

[29] *See, e.g.*, Constitution of the Republic of Estonia Amendment Act, September 14, 2003 (May 1, 2017), available at http://www.president.ee/en/republic-of-estonia/the-constitution/. The main provisions are: § 1. Estonia may belong to the European Union, provided the fundamental principles of the Constitution of the Republic of Estonia are respected. § 2. When Estonia has acceded to the European Union, the Constitution of the Republic of Estonia is applied without prejudice to the rights and obligations arising from the Accession Treaty. *See also* Constitutional Act of the Republic of Lithuania on Membership of the Republic of Lithuania in the European Union, July 13, 2004 (May 1, 2017), available at http://www.lrs.lt/upl_files/Lietuvos_pirmininkavimas_ES/dokumentai/CONSTITUTIONAL_ACT.pdf. Additionally *see The Impact of EU Accession on the Legal Orders of New EU Member States and (Pre-)Candidate Countries: Hopes and Fears* (A.E. Kellermann et al. (eds.), The Hague: TMC Asser Press, 2006). *See also* Art. 23 of the Basic Law for the Republic of Germany, Germany 1949 (rev. 2012) (May 1, 2017), available at https://www.constituteproject.org/constitution/German_Federal_Republic_2012?lang=en, and Art. 88 of the Constitution of France, France 1958 (rev. 2008) (May 1, 2017), available at https://www.constituteproject.org/constitution/France_2008?lang=en.

international law and international treaties must be consulted in order to clarify the effect of the EAEU Treaty itself. Art. 15(4) of the Constitution provides:

> The universally-recognized norms of international law and international treaties and agreements of the Russian Federation shall be a component part of its legal system. If an international treaty or agreement of the Russian Federation fixes other rules than those envisaged by law, the rules of the international agreement shall be applied.

Based on this provision, it is observed in literature that Russia has adopted the strictest available option of supremacy of rules of international law.[30] According to the above mentioned provision, international agreements form part of the Russian legal system and possess supremacy over national law. It is crucial that the wording chosen for the provision is "part of its legal system" rather than "part of Russian (legislation)," which in certain interpretation could invoke the principle *lex posteriori derogat legi priori*, and future laws could prevail.[31] The second sentence of the provision traces back to the 1992 law amending the 1978 Constitution of the Russian Federation, which, however, established supremacy only with regard to the internationally recognized human rights rules.[32] The Constitutional Court established that international agreements prevail over all national rules, and not only laws.[33] The only exception is the Constitution itself, as "international treaties of the Russian Federation that do not correspond to the Constitution of the Russian Federation, shall not be implemented or used."[34] Thus, if an international agreement establishes rules necessary to change certain provisions of the Constitution, a decision on its obligatory force for Russia

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[30] Исполинов А.С. Статус международных договоров в национальном праве: некоторые теоретические и практические аспекты, 1(94) Российский юридический журнал 191 (2014) [Alexey S. Ispolinov, *A Status of International Treaties in the National Law: Some Theoretical and Practical Aspects*, 1(94) Russian Juridical Journal 191 (2014)]. However, it must be noted that such problem-setting is far from clear, since the whole idea, which can be deduced from such statements, reminds of an approach of a bargaining position regarding how closely one has to follows and respect international law (e.g. in some respect similar to WTO tariff negotiations).

[31] *See more in* Марочкин С.Ю. Действие и реализация норм международного права в правовой системе Российской Федерации [Sergey Yu. Marochkin, *Action and Implementation of International Law in the Legal System of the Russian Federation*] (Moscow: Norma, 2011).

[32] Закон РФ от 21 апреля 1992 г. № 2708-I "Об изменениях и дополнениях Конституции (Основного Закона) Российской Советской Федеративной Социалистической Республики," Российская газета, 1992, № 111 [Law of the Russian Federation No. 2708-I of April 21, 1992. On Amendments and Addenda to the Constitution (Basic Law) of the Russian Soviet Federative Socialist Republic, Rossiyskaya Gazeta, 1992, No. 111]; *See also* Конституция Российской Федерации: доктринальный комментарий (постатейный) [Constitution of the Russian Federation: The Doctrinal Comment (Itemized)] (Yu.A. Dmitrieva (ed.), Moscow: Delovoy Dvor, 2009).

[33] Определение Конституционного Суда РФ от 3 июля 1997 г. № 87-О, Вестник Конституционного Суда РФ, 1997, № 5 [Decision of the Constitutional Court of the Russian Federation No. 87-O of July 3, 1997, Bulletin of the Constitutional Court of the Russian Federation, 1997, No. 5].

[34] Art. 125(6) of the Constitution of the Russian Federation.

is only possible in a form of a federal law after introduction of the corresponding amendments into the Constitution or after the revision of its provisions.[35] The Supreme Court of the Russian Federation has explained that national courts cannot apply national legal rules that are different from the rules established by an international agreement ratified by a federal law – in this case, rules of such an agreement apply.[36] Similarly, the range of international agreements possessing priority over Russian laws is limited to those ratified by a federal law.[37] As a result, the EAEU Treaty is part of Russian national law as well and has priority over its legislation, albeit with certain limitations and although the Treaty itself does not provide for it.

As for decisions of the Commission, which under the EAEU Treaty are directly applicable on the territory of Member States, the situation is less clear from the point of view of Russian constitutional law. Back in 2006 the Economic Court of the Commonwealth of Independent States, performing the duties of the EurAsEC Court,[38] analysed the legislation of EurAsEC Member States and came to the conclusion that there was no national constitutional basis for direct applicability of EurAsEC acts.[39]

However, there are wide disparities between the EAEU Member States in this respect, which range from recognizing Commission decisions as functioning law of the land alongside international treaties (Kazakhstan) to their essentially sublegislative character (Belarus). The Constitution of Kazakhstan states: "…international treaty *and other commitments* of the Republic… shall be the functioning law in the Republic of Kazakhstan".[40] The Constitutional Council of the Republic of Kazakhstan has ruled

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35 Art. 22 of the Law on International Treaties.

36 Постановление Пленума Верховного Суда РФ от 31 октября 1995 г. № 8 "О некоторых вопросах применения судами Конституции Российской Федерации при осуществлении правосудия," Вестник Верховного Суда РФ, 1996, № 1 [Ruling of the Plenum of the Supreme Court of the Russian Federation No. 8 of October 31, 1995. On Certain Issues of Application of the Constitution of the Russian Federation by the Courts during Administration of Justice, Bulletin of the Supreme Court of the Russian Federation, 1996, No. 1], part 5, sec. 2.

37 *Id.*

38 Решение Межгосударственного Совета ЕврАзЭС от 27 апреля 2003 г. № 123 "Об организации функционирования Суда Евразийского экономического сообщества," Информационный бюллетень ЕврАзЭС, 2003, № 5, с. 150 [Decision of the EurAsEC Interstate Council No. 123 of April 27, 2003. On Organization of Functioning of the Court of the Eurasian Economic Community, EurAsEC Information Bulletin, 2003, No. 5, at 150].

39 Консультативное заключение Экономического Суда СНГ от 10 марта 2006 г. № 01-1/3-05 "По запросу Интеграционного Комитета Евразийского экономического сообщества о толковании части второй статьи 1, части первой статьи 14 Договора об учреждении Евразийского экономического сообщества от 10 октября 2000 года" [Consultative Opinion of the CIS Economic Court No. 01-1/3-05 of March 10, 2006. At the Request of the Integration Committee of the Eurasian Economic Community about Interpretation of Articles 1(2) and 14(2) of the Treaty on the Establishment of the Eurasian Economic Community of October 10, 2000] in Решения Экономического Суда Содружества Независимых Государств, 1992–2006 [Decisions of the Economic Court of the Commonwealth of Independent States, 1992–2006] 540 (Minsk: Kovcheg, 2007).

40 Art. 4(1) of the Constitution of the Republic of Kazakhstan. *See* Kazakhstan 1995 (rev. 2011) (May 1, 2017), available at https://www.constituteproject.org/constitution/Kazakhstan_2011?lang=en, emphasis added.

that the obligations of Kazakhstan that stem from decisions of the Commission of the Customs Union (predecessor of the EAEU Commission) fall under the category of "other commitments" under the Constitution.[41]

In the Belarusian legal system, the Constitutional Court of the Republic of Belarus has powers to deliver opinions on the conformity of Commission decisions not only to the Constitution and ratified international agreements, but also to laws and decrees of the President.[42] This is in fact an improvement to the previous situation, where the Constitutional Court could unilaterally find such acts inapplicable,[43] which it cannot do any longer following legislative changes.[44] In any event, Commission decisions are still essentially considered hierarchically lower than laws and decrees of the President.

There are no separate provisions regarding acts of international institutions in Russian constitutional law. However, the Constitutional Court of the Russian Federation delivered a ruling that gives jurisdiction to rule on the constitutionality of decisions of the Commission based on human rights concerns and foundations of constitutional order.[45] This position of the Constitutional Court could serve as a potential source for tensions and the whole idea will be crucial to the discussion that will ensue later in the article.

3. The Eurasian Judiciary

Another source for tensions between the two legal orders could come from direct rulings against the state. However, such instances are rather limited in the EAEU legal order, since in the case of Member States failing to comply with EAEU law, the main regulatory body – the EAEU Commission – cannot any longer refer them to the EAEU Court. The Commission is deprived of such a function, which, however

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41 Нормативное постановление Конституционного Совета Республики Казахстан от 5 ноября 2009 г. № 6 "Об официальном толковании норм статьи 4 Конституции Республики Казахстан применительно к порядку исполнения решений международных организаций и их органов" [Normative Ruling of the Constitutional Council of the Republic of Kazakhstan No. 6 of November 5, 2009. On Official Interpretation of the Norma of Article 4 of the Constitution of the Republic of Kazakhstan with Regard to Procedure of Implementation of Decisions of International Organizations and Their Bodies], part 4 (May 1, 2017), available at http://www.ksrk.gov.kz/rus/resheniya/?cid=11&rid=533.

42 Art. 116(4) of the Constitution of the Republic of Belarus. *See* Belarus 1994 (rev. 2004) (May 1, 2017), available at https://www.constituteproject.org/constitution/Belarus_2004?lang=en.

43 Закон Республики Беларусь от 30 марта 1994 г. № 2914-XII "О Конституционном суде Республики Беларусь" [Law of the Republic of Belarus No. 2914-XII of March 30, 1994. On the Constitutional Court of the Republic of Belarus] (May 1, 2017), available at http://base.spinform.ru/show_doc.fwx?rgn=1947.

44 Закон Республики Беларусь от 8 января 2014 г. № 124-З «О конституционном судопроизводстве» [Law of the Republic of Belarus No. 124-Z of January 8, 2014. On Constitutional Judicial Procedure], Art. 85, paras. 7 & 8 (May 1, 2017), available at http://www.kc.gov.by/main.aspx?guid=21735.

45 Определение Конституционного Суда РФ от 3 марта 2015 г. № 417-О, Вестник Конституционного Суда РФ, 2015, № 3 [Decision of the Constitutional Court of the Russian Federation No. 417-O of March 3, 2015, Bulletin of the Constitutional Court of the Russian Federation, 2015, No. 3].

limited, was available before.[46] If after the Commission's monitoring of compliance with international agreements, there were reasons to believe that one of the parties had not complied with such agreements or Commission decisions, the Commission Council could inform the relevant party and establish a timeframe to address the infringement. If the decision was not complied with, the Commission Council had the right to refer the issue to the EurAsEC Court. The Court could also introduce reasonable interim measures to ensure compliance with the decision or to prevent possible further infringements. The chance of reaching this stage was small since the Commission Council adopted consensus decisions and an infringing Member State could block any such decision. If the issue appeared before the Court, it was not clear what "reasonable interim measures" would look like. Further, if the Court's decision was not complied with, the issue could be referred to the EurAsEC Supreme Council with unanimous decision making. Regardless of these limitations, the Commission could react to the infringements by Member States, which it no longer can. Now, however, in the case of infringements, only Member States can bring actions against other Member States for non-compliance (which is a novelty compared to EurAsEC).

In the EU, there is a comparable supranational procedure in Art. 258 of the Treaty on the Functioning of the European Union (TFEU).[47] Usually, infringements by Member States are in the form of the non-implementation of obligations under EU law or adoption of domestic legal acts, which contravene the obligations within the organization.[48] The existence of an obligatory and exclusive judicial body for these kinds of cases makes the EU different from many other international organizations, and this procedure is the most important tool to ensure the implementation of EU law. The lack of procedure in the EAEU is a return to the common practice in international public law where compliance with international contractual obligations is decided between parties to respective agreements.[49] This does not promote effective judicial control or functioning of the EAEU legal order. Moreover, as many years of EU experience suggest, a Member State rarely brings an action against another Member State to the ECJ, as it is a sign of malevolence and there is the risk of analogous actions against them in the future and Member States prefer political dispute resolution.[50] However, the

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[46] Договор о Евразийской экономической комиссии от 18 ноября 2011 г., Собрание законодательства Российской Федерации, 2012, № 11, ст. 1275 [Treaty on the Eurasian Economic Commission of November 18, 2011, Legislation Bulletin of the Russian Federation, 2012, No. 11, Art. 1275].

[47] Consolidated version of the Treaty on the Functioning of the European Union, OJ C 326, 26.10.2012, at 47–390.

[48] Joseph H.H. Weiler, *The Transformation of Europe*, 100(8) Yale Law Journal 2403, 2419 (1991).

[49] Andrew C. Evans, *The Enforcement Procedure of Article 169 EEC: Commission Discretion*, 4 European Law Review 443 (1979).

[50] Paul Craig & Gráinne de Búrca, *EU Law: Text, Cases, and Materials* 433 (5th ed., Oxford: Oxford University Press, 2011). However, in the EAEU practice there is already one case brought by one Member State against the other regarding violations of the EAEU Treaty, *see* Постановление Большой коллегии

actions brought by the European Commission against Member States are common and Member States tend to comply with the decisions of the ECJ against them.[51]

In any event, this will considerably limit challenges against Member States, and there will be less direct pressure on the part of the EAEU Court towards the Russian legal order. However, this does not mean absence of tensions between the legal orders. In fact, the increased ability of Member States to get away with non-implementation of obligations emanating from the EAEU legal order will create tensions which could remain unaddressed and could build up.

Another procedure that helps eliminating attempts of Member States to circumvent certain legal obligations is the preliminary ruling. It is done by Member States' actions being challenged in their own national courts. This procedure is a system of judicial oversight within the judicial systems of Member States in cooperation with an organization's court. When the issue of interpretation of law of the organization appears before a national court, such a court can stay the case and make an inquiry to the court of the organization for an interpretation. In the EU, when a national court is the court of final instance, it is obliged to refer to the ECJ with such an inquiry.[52] After the ruling is delivered, it is sent back to the national court, which rules on the case in hand. Therefore, national courts and the organization's court are integrated into a single system of judicial oversight. In the EurAsEC Court the preliminary ruling procedure, however limited, was available. Even though it was used only once there,[53] EU practice suggests that the ECJ and the national courts of EU Member States use this procedure regularly.[54] Through this procedure, individuals become, to a certain extent, agents monitoring Member States' compliance with EU legal obligations.[55]

The goal of the EU preliminary ruling procedure is similar to the whole mission of the EAEU Court, which is to preserve the uniform interpretation of the law and the effective functioning of the legal order itself. However, this procedure also goes

Суда Евразийского экономического союза от 12 сентября 2016 г. [Ruling of the Eurasian Economic Union Grand Chamber of September 12, 2016] (May 1, 2017), available at http://courteurasian.org/doc-16453.

51 *See* Alec Sweet & Thomas Brunell, *The European Court of Justice, State Noncompliance, and the Politics of Override*, 106(1) American Political Science Review 204 (2012).

52 Art. 267 of the TFEU.

53 Решение Большой коллегии Суда Евразийского экономического сообщества от 10 июля 2013 г., Бюллетень Суда Евразийского экономического сообщества, 2013, № 2, с. 7 [Decision of the EurAsEC Court Grand Chamber of July 10, 2013, Bulletin of the Court of the Eurasian Economic Union, 2013, No. 2, at 7].

54 Court of Justice of the European Union Annual Report 2014: Synopsis of the Work of the Court of Justice, the General Court and the Civil Service Tribunal, at 72 (May 1, 2017), available at https://curia.europa.eu/jcms/upload/docs/application/pdf/2015-03/en_ra14.pdf. Altogether 8710 references for a preliminary ruling, which is almost equal to all direct actions (8901).

55 Weiler 1991, *supra* note 48.

beyond that stated purpose to also protect individual rights. Through this procedure, the national courts of EU Member States and the CJEU are integrated into one system of judicial supervision. Even when there are limits of direct access of individuals to the CJEU, the supremacy and direct effect of EU law enables any individual or organization to challenge the actions of their own Member States using EU law.

This procedure has been abolished with the advent of the EAEU. The removal of the preliminary ruling procedure in the EAEU Court disintegrated national courts from the Eurasian judicial system. This will inevitably lead to differing practices and make the job of the EAEU Court to ensure the uniform application of Union law extremely difficult. The disintegration of the judicial system can become a source of disparities and eventual tensions. The procedure that could compensate for the lack of the preliminary ruling procedure is the ability of Member States to assign state bodies (including courts) to request clarification from the EAEU Court.[56] Leaving the issue of access to judicial interpretation in the hands of Member States is not reassuring. However, practice will show the viability of this measure.

There are many reasons why Member States would want to limit the powers of the EAEU judiciary. One of them is the activist attitude taken by the previous EurAsEC Court from the very start, borrowing from the ECJ.[57] The court's practices even lead Ispolinov to describe it as a "new-style institution of international justice".[58] He claims that one of its very first judgments – *Yuzhnii Kuzbass*[59] – was the first case of judicial activism in the post-Soviet space.[60] In this case, treaty interpretation was more extensive than the textual provisions suggest. In particular, while the relevant EurAsEC legal acts did not explicitly provide the EurAsEC Court with powers to declare the Commission's decisions void, the Court decided otherwise. It declared the Commission's decision void, decided on the time when it became void, and made the judgment applicable not only to the parties of the dispute, but *erga omne*. Following that, it is probably not surprising that the new EAEU Court has been explicitly banned from deciding on such issues, and the Commission's decisions remain in effect until the Commission implements the ruling.

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56 Pt. 49 of the Statute of the EAEU Court.

57 About judicial activism of the Court of Justice *see* Mark Dawson et al., *Judicial Activism at the European Court of Justice* (Cheltenham and Northampton, Mass.: Edward Elgar Publishing, 2013).

58 Alexey Ispolinov, *First Judgments of the Court of the Eurasian Economic Community: Reviewing Private Rights in a New Regional Agreement*, 40(3) Legal Issues of Economic Integration 225 (2013).

59 Постановление Большой коллегии Суда ЕврАзЭС от 8 апреля 2013 г., Бюллетень Суда Евразийского экономического сообщества, 2013, № 1, с. 47 [Ruling of the EurAsEC Court Grand Chamber of April 8, 2013, Bulletin of the Court of the Eurasian Economic Union, 2013, No. 1, at 47].

60 Исполинов А.С. Решение Большой Коллегии Суда ЕврАзЭС по делу Южного Кузбасса: насколько обоснован судейский активизм?, 5(60) Евразийский юридический журнал 22 (2013) [Alexey S. Ispolinov, *Decision of the Grand Chamber of the Court of the Eurasian Economic Community in the Case of Yuzhniy Kuzbass: To What Extent Judicial Activism is Justified?*, 5(60) Eurasian Law Journal 22 (2013)].

These examples show that there are also indirect ways for the EAEU Court to prescribe actions. Decisions of this kind in the future could be a source for tension with the Russian legal order, since it is ensured by its national judicial system. The procedures via which such indirect tensions can appear are multiple. The Statute of the EAEU Court establishes that the Court can adjudicate on issues raised about implementation of EAEU law upon request of a Member State or an economic entity.[61] Member States can also raise issues concerning compliance of international agreements within the Union with the EAEU Treaty, compliance of other Member States with the law of the Union, compliance of decisions of the main regulatory body Eurasian Economic Commission (with the law of the Union, and challenge an action (inaction) of the Commission).[62] The EAEU Court has retained the procedure established within the EurAsEC Court, where economic entities, including foreign ones, can raise issues of compliance of a Commission's decision that directly affect their economic rights, with the EAEU Treaty and (or) international agreements within the Union. The same can be done regarding an action (or lack thereof) of the Commission.

4. The Interrelations of the Judiciaries

The ultimate changes in the powers of the EAEU Court are likely a way to address tensions that have already happened and to prevent future ones. Judicial activism as such, even though potentially irritating for Member States, is not something that could promote such tremendous changes as removing the preliminary ruling procedure altogether. However, if such activism is not well grounded and involves direct confrontation – that could be more than irritating. An example of the first (and the last) preliminary ruling action could serve as an illustrative example. The request for the preliminary ruling was made by the Supreme Economic Court of Belarus. However, it almost immediately withdrew the request. Nevertheless, the EurAsEC Court decided to open the proceedings as it had a right to do so.[63] However, the EurAsEC Court's argument was peculiar:

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61 The EAEU Treaty defines an "economic entity" or "market participant" as a "commercial organization or a non-profit organization operating with generation of profit, an individual entrepreneur, as well as a natural person whose professional income-generating activities are subject to state registration and/or licensing under the legislation of the Member States" (pt. 2(20) of the Protocol on General Principles and Rules of Competition, Annex 19 to the Treaty on the Eurasian Economic Union of May 29, 2014 (May 1, 2017), available at https://docs.eaeunion.org/docs/en-us/0003610/itia_05062014).

62 Pt. 39 of the Statute of the EAEU Court.

63 Регламент Суда Евразийского экономического сообщества, утвержденный Решением Суда ЕврАзЭС от 12 июля 2012 г. № 21 [Regulations of the Court of the Eurasian Economic Community, adopted by the Decision of the Court of the Eurasian Economic Community No. 21 of July 12, 2012], Art. 37(1)(v) (May 1, 2017), available at http://www.consultant.ru/document/cons_doc_LAW_132785/.

> as if decided otherwise it would not meet the requirements of procedural economy and might lead to an unjustified delay in adjudication of the case.[64]

It is very unclear how exactly procedural economy would be affected and why would a delay take place at all. It has been suggested in a text co-authored with one of the judges involved in the case, that this approach was taken from the ECJ's Rules of Procedure (a draft back then).[65] Indeed, one can only understand the EurAsEC Court's statement in light of the explanation given by the drafters of the ECJ's Rules of Procedure, and particularly the following norm (in the formulation of the final version of the Rules of Procedure):

> The withdrawal of a request may be taken into account until notice of the date of delivery of the judgment has been served on the interested person...[66]

This provision provides for a right to deliver a judgment notwithstanding a withdrawal of a request for a preliminary ruling. The drafters explain this provision in terms of procedural economy "since a number of similar cases may have been stayed, either by the [ECJ] or by national courts or tribunals, pending the forthcoming judgment."[67] In that case not delivering a judgment could lead to dealing with every case that has been stayed, which would cause a delay in the progress of those cases. However, the drafters underlined that such a withdrawal must happen "at a very advanced stage of the proceedings, when the date of delivery of the judgment has been communicated" and when "the [ECJ's] deliberations will have been completed." Conversely, in the case of the EurAsEC Court, the withdrawal request was made at an early stage only two weeks after the request for preliminary ruling was accepted.[68] As it has been noted in the dissenting opinion of judge Smirnov, there was no proof of similar cases stayed in national courts, pending the forthcoming judgment; and no proof that the proceedings before the Supreme Economic Court of Belarus could

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64 Decision of the EurAsEC Court Grand Chamber of July 10, 2013, *supra* note 53, at 11.

65 *Euroasian Integration*, *supra* note 5, at 179.

66 Consolidated version of the Rules of Procedure of the Court of Justice of September 25, 2012, OJ L 265, 29.9.2012, as amended on June 18, 2013, OJ L 173, 26.6.2013.

67 *See* comments to Art. 101 in the Draft Rules of Procedure of the Court of Justice of May 25, 2011 (May 1, 2017), available at http://curia.europa.eu/jcms/upload/docs/application/pdf/2011-05/en_rp_cjue.pdf.

68 The request for preliminary ruling was accepted by the EurAsEC Court on April 22, 2013, the applicant withdrew the request on May 6, *see* Decision of the EurAsEC Court Grand Chamber of July 10, 2013, *supra* note 53, at 7. The applicant repeatedly requested a withdrawal on June 21, 2013, *see* the dissenting opinion of judge Smirnov of July 10, 2013 in Case 1-6/1-2013 on file with the author.

be delayed.[69] Claims, such as lack of explanation of the withdrawal request, that the EurAsEC Court had already involved a number of experts, etc. do not seem to be quite enough. Therefore, it is more likely that the Court, having had the very first preliminary ruling request, wanted to seize the opportunity and establish its authority at any cost. A number of activist provisions in the final ruling (e.g. that the ruling was "directly effective" on the territory of all Member States) only confirms this position.

Therefore, an assertive attitude of the EAEU Court coupled with the overreaction of the Member States have led to tensions that have resulted in drastic reduction of powers of the EAEU Court. This has eventually led to the situation where national courts have been left completely disintegrated from the Eurasian judicial system, while an essential part of the ability of the EAEU Court to ensure the functioning of the EAEU legal order is the way national judiciary perceive the EAEU Court's authority.

In this respect it is important to turn to the Russian Constitutional Court, which has already voiced its differences in approaches with the Eurasian judiciary. Thus, there are challenges to the interpretative role, e.g. according to the Constitutional Court, on the Russian soil, the norms of the Customs Code of the Customs Union, which have become part of EAEU law, should be implemented according to its own interpretation.[70] Further, there are different approaches to retroactive applications of Commission decisions.[71] Although, the Constitutional Court does not directly state the wrongness of the Eurasian judiciary, it can be deduced from the Constitutional Court's reasoning, that in certain cases, positions of the Eurasian judiciary should only be taken into account by national courts, rather than complied with.[72] Essentially, such challenges are based on concerns regarding human rights and foundations of the constitutional system, which brings us to a different dimension of source for tension.

The direct and indirect sources for tensions have been a recurring topic throughout the article. The same goes to the Russian judiciary and the Constitutional Court as the major institution therein. The tensions can come not only through direct confrontation with the EAEU Court, but through a certain line of case-law involving other external judicial authorities. First and foremost this concerns the jurisprudence of the Russian Constitutional Court concerning ECtHR decisions. The

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69 Dissenting opinion of judge Smirnov of July 10, 2013 in Case 1-6/1-2013, at 3.

70 *See* Определение Конституционного Суда РФ от 2 июля 2013 г. № 1050-О [Decision of the Constitutional Court of the Russian Federation No. 1050-O of July 2, 2013] (May 1, 2017), available at http://doc.ksrf.ru/decision/KSRFDecision136123.pdf.

71 Decision of the Constitutional Court of the Russian Federation No. 417-O of March 3, 2015, *supra* note 45.

72 *Id.*

most recent case is the Yukos decision,[73] which has seen the Constitutional Court establishing impossibility to implement the 2014 ECtHR judgment finding Russia in violation of its obligations under the ECHR and requiring it to pay a considerable sum to Yukos shareholders.[74] However, essential preconditions for the ruling have been set out in another ruling of the Constitutional Court concerning implementation of ECtHR judgements as such,[75] which has been followed by a respective law.[76] According to that ruling, the Constitutional Court maintains that Russia can set aside international obligations if it is the only option to prevent the violation of principles and norms of the Russian Constitution. When formulating its own position, the Constitutional Court heavily relied on the rulings of the constitutional authorities of Germany,[77] Italy,[78] Austria,[79] and the UK,[80] which were quite critical of the ECtHR. However, the Constitutional Court also went beyond that. First, the Constitutional Court referred to the Vienna Convention on the law of treaties, in particular Art. 31(1) which establishes that a treaty must be interpreted "in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."[81] Following this provision, the Constitutional Court claimed that an international treaty is obligatory to the parties in the meaning, which could be understood using this rule of interpretation. The court continued, that if the ECtHR, when interpreting a provision of the European Convention on

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73 Постановление Конституционного Суда РФ от 19 января 2017 г. № 1-П [Ruling of the Constitutional Court of the Russian Federation No. 1-P of January 19, 2017] (May 1, 2017), available at http://www.consultant.ru/document/cons_doc_LAW_211287/.

74 *OAO Neftyanaya Kompaniya YUKOS v. Russia*, no. 14902/04, ECHR 2014.

75 Постановление Конституционного Суда РФ от 14 июля 2015 г. № 21-П [Ruling of the Russian Federation Constitutional Court No. 21-P of July 14, 2015] (May 1, 2017), available at http://www.consultant.ru/document/cons_doc_LAW_182936/.

76 Федеральный конституционный закон от 14 декабря 2015 г. № 7-ФКЗ "О внесении изменений в Федеральный конституционный закон 'О Конституционном Суде Российской Федерации'", Собрание законодательства Российской Федерации, 2015, № 51 (ч. 1), ст. 7229 [Federal Constitutional Law of the Russian Federation No. 7-FKZ of December 14, 2015. On Amending the Federal Constitutional Law on the Constitutional Court of the Russian Federation, Legislation Bulletin of the Russian Federation, 2015, No. 51 (part 1), Art. 7229].

77 GFCC, Order of the Second Senate of October 14, 2004 – 2 BvR 1481/04 (regarding *Gorgulu v. Germany*, no. 74969/01 ECHR 2004); BVerfG, 29.05.1974 – 2 BvL 52/71 *Solange I*.

78 Judgment Corte Costituzionale of November 19, 2012 no. 264/2012 (regarding *Maggio and others v. Italy*, nos. 46286/09, 52851/08, 53727/08, 54486/08 and 56001/08 ECHR 2011); (regarding *Jurisdictional Immunities of the State (Germany v. Italy: Greece Intervening)*, Judgment of February 3, 2012, 2012 ICJ Rep. 99).

79 VfGH decision of October 14, 1987, B 267/86.

80 Judgment of October 16, 2013 UKSC 63 (regarding *Hirst v. the United Kingdom (No. 2)*, no. 74025/01 ECHR 2005).

81 Art. 31(1) of the Vienna Convention on the Law of Treaties of May 23, 1969, 1155 UNTS 331.

Human Rights, attributes to a term a meaning different from an ordinary one, or if it interprets contrary to the object and purpose of the Convention, a state gets a right to refuse to implement a judgement against it as going beyond the obligations voluntarily accepted when ratifying the Convention. This is a far reaching statement, which presupposes the ability to set aside not only interpretations of international courts, but international obligations in general. It can easily be used with regard to interpretations made by the EAEU Court in the future.

But the Constitutional Court went further, stating that a judgment of the ECtHR cannot be considered obligatory if an interpretation of a provision of the Convention, made in defiance of the general rule of interpretation, would disagree with the imperative norms of general international law (*jus cogens*). The Constitutional Court considers sovereign equality and related rights, as well as non-interference into domestic matters as "undoubtedly" norms *jus cogens*.

There are several issues with this point of view. It is not entirely clear if the interpretation violating *jus cogens* is a special case of possible "wrongful" interpretations, particularly relevant for the case in hand, or the only one. Either way, sovereignty and non-interference, if considered as part of *jus cogens*, could be interpreted quite broadly. The norms of *jus cogens* are far from clear in international law.[82] Even so, sovereign equality and non-interference are not usually listed as part of *jus cogens*. Generally speaking, it remains a mystery why the *jus cogens* argument was made at all. To some extent is reminiscent of the *Kadi* case, where the General Court of the EU tried to use the *jus cogens* argument, which was eventually ignored by the CJEU.[83]

The ECtHR, being a court whose primary concern is human rights, is under pressure from the Constitutional Court of the Russian Federation exactly about the protection of human rights. Ironically enough, the EAEU Court, not having a catalogue of human rights to rely on in the first place, is under particular pressure for possible violations of human rights. Therefore, the Constitutional Court has even more space for manoeuvre to disregard the EAEU Court and, eventually, the EAEU legal order.

Conclusion

This analysis shows that there are a number of sources for possible tensions between the legal orders of the EAEU and Russia. Some of the developments have already scratched the surface of such tensions.

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[82] *See, e.g.*, Alexander Orakhelashvili, *Peremptory Norms in International Law* 40 (Oxford: Oxford University Press, 2008).

[83] Judgment of September 30, 2010 in Case T-85-09 Kadi v. Commission, [2010] ECR II-5177; Judgment of July 18, 2013 in Joined Cases C-584-10, C-593-10 and C-595-10 Commission and others v. Kadi Appeal [2013] ECLI:EU:C:2013:518. More on Kadi cases see Kadi on Trial: A Multifaceted Analysis of the Kadi Trial (M. Avbelj et al. (eds.), London and New York: Routledge, 2014).

On the one hand, sources for tensions are not immediately evident given the absence of the express notion of supremacy of EAEU law, international law-friendly provisions of the Russian Constitution, little possibilities for the EAEU Court to rule directly against Member States, generally limited powers of the EAEU Court and a rather positively careful approach of the Russian Constitutional Court towards the jurisprudence of the EAEU Court. On the other hand, some of the exact same reasons can be looked at from another side and become sources for tensions. Thus, the indeterminacy of the issue of supremacy could be interpreted differently by the Eurasian judiciary and national judiciaries. Also, the fact of little possibilities for the EAEU Court to rule directly against Member States, as well as diminished powers of the EAEU Court coupled with overall disintegration of national and Eurasian judiciary, could lead to widely different approaches, interpretations and practices in applying EAEU law. This might result in legal conflicts throughout the EAEU.

Apart from that, there are indirect dangers stemming from the case-law of the Russian Constitutional Court. The Constitutional Court, using rather weak arguments, has established the possibility for Russia to set aside international obligations. Ironically, an argument essentially based on human rights, is used against the human rights authority – the ECtHR – the court whose primary function is to protect human rights. In this context the position of the EAEU Court, which does not even have a catalogue of human rights to rely upon, is rather weak against the Constitutional Court.

To address these issues and reduce possibilities for tensions one has to go back to the inception of the EAEU legal order, and recall the role Russia played in shaping it as a founding member. The Eurasian integration developed within a narrative largely shaped by Russia and its legal order. Hence, to continue shaping it further, actors within the Russian legal order, primarily the Constitutional Court, must play a constructive role. The EAEU Court, in its turn, must be similarly constructive rather than overly assertive in establishing its authority; and it should be by no means precluded, either through the diminished powers or by other means, from guiding the development of the legal order.

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