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LEGAL CONSEQUENCES OF THE ACTS OF THE EURASIAN ECONOMIC UNION COURT AND PROBLEMS OF THEIR ENFORCEMENT

In this article the problems of legal consequences of the Eurasian economic union's (EEU) judicial actsare analyzed and the specifics of the implementation of these acts by member States and economic entities are reviewed. The legal consequences of non-compliance with these acts have a serious impact on both the legal order of the EEU and the legal systems of the Union's member states.

In conducting this research, the authors used general scientific, general legal and special legal research methods. Based on comparative legal analysis, the authors consider the statutory features of each individual act, especially its decisions that have binding legal force. The activity of the EEU Court was compared with the features of other international courts, which allowed to identify positive and negative sides. In this work, the mechanisms of interaction between the EEU Court and the national courts of the Union member states were studied, and such interaction was considered in relation not only to the highest courts of the member states, but also to national courts of all levels. In order to improve the efficiency of the EEU Courtfunctioning, it is proposed to give the EEU Court the power to provide pre-trial opinions, as well as to grant the right of the EEC to initiate a lawsuit against the EEU member states that violate their obligations under the law of the Union.

Key words: The court of the EEU, Statute, regulations, Board, resolutions, decisions, Advisory opinions, enforcement of court decisions.

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Еуразиялық Экономикалық Одақ соты актілерінің құқықтық салдары және оларды орындау мәселелері

Мақалада Еуразиялық экономикалық одақтың (ЕЭО) сот актілерінің құқықтық салдарларының мәселелері және осы актілерді мүше мемлекеттер мен шаруашылық жүргізуші субъектілердің орындау ерекшеліктері талданады. Осы актілерді орындамаудың құқықтық салдары ЕЭО құқықтық тәртібіне де, Одаққа мүше мемлекеттердің құқықтық жүйелеріне де айтарлықтай ықпал етеді.

Бұл зерттеуді жүргізу кезінде авторлар зерттеудің жалпы ғылыми, жалпы құқықтық және арнайы-құқықтық әдістерін пайдаланды. Салыстырмалы-құқықтық талдау негізінде әрбір жеке актінің, әсіресе оның міндетті заңдық күші бар шешімінің статуттық ерекшеліктері қаралды. ЕАЭО сотының қызметі басқа халықаралық соттардың ерекшеліктерімен салыстыру арқылы оның оң және теріс жақтары анықталды. Жұмыста ЕАЭО Сотының Одаққа мүше мемлекеттердің ұлттық соттарымен өзара іс-қимыл тетіктері зерттелді, бұл ретте мұндай өзара іс-қимыл тек мүше мемлекеттердің жоғарғы соттарымен ғана емес, сонымен қатар барлық инстанциялардағы ұлттық соттарға да қатысты қарастырылды. ЕАЭО Сотының жұмыс істеу тиімділігін арттыру мақсатында ЕАЭО сотына преюдициялық қорытындылар ұсыну бойынша өкілеттіктер беру, сондай-ақ ЕЭК-ға Одақ құқығы бойынша өз міндеттемелерін бұзатын ЕАЭО мүше-мемлекеттеріне қарсы талап қою құқығын беру ұсынылады.

Түйін сөздер: ЕАЭО Соты, статут, регламент, коллегия, қаулы, шешім, консультативті қорытындылар, сот шешімдерін орындау.

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Правовые последствия актов суда Евразийского Экономического Союза и проблемы их исполнения

В статье анализируются проблемы правовых последствий судебных актов Евразийского экономического союза (ЕАЭС) и специфика исполнения этих актов государствами-членами и хозяйствующими субъектами. Правовые последствия неисполнения данных актов довольно серьезно влияют как на правопорядок ЕАЭС, так и на правовые системы государств-членов Союза.

При проведении данного исследования авторы использовали общенаучные, общеправовые и специально-правовые методы исследования. На основе сравнительно-правового анализа рассмотрены статусные особенности каждого отдельного акта, в особенности его решения, обладающие обязательной юридической силой. Деятельность Суда ЕАЭС была сопоставлена с особенностями других международных судов, что позволило выявить положительные и отрицательные стороны. В работе были изучены механизмы взаимодействия Суда ЕАЭС с национальными судами государств-членов Союза, причем такое взаимодействие рассматривалось в отношении не только высших судов государств-членов, но и национальных судов всех инстанций. В целях повышения эффективности функционирования Суда ЕАЭС предлагается наделить Суд ЕАЭС полномочиями по предоставлению преюдициальных заключений, а также предоставить право ЕЭК инициировать иск против государств-членов ЕАЭС, которые нарушают свои обязательства по праву Союза.

Ключевые слова: Суд ЕАЭС, статут, регламент, коллегия, постановления, решения, консультативные заключения, исполнение судебных решений.

Introduction

In accordance with the "Kazakhstan-2050" strategy, the creation of the Eurasian Economic Union (hereinafter – the EAEU) was the country's immediate goal, and regional integration itself was perceived as the best way to stabilize Central Asia. The strategy clearly defines the tasks of creating this union: diversification of foreign policy, development of economic and trade diplomacy to protect and promote national economic and trade interests.

The EAEU Agreement defines several types of acts adopted by the EAEU bodies: orders of an organizational and administrative nature and decisions containing provisions of a regulatory nature. A variety of acts of the EAEU Court are specified in the Statute and in the Rules of Procedure of this Court **(**Statute of the court of the Eurasian Economic Union, 2014**)**. In accordance with these documents, the Court may issue rulings, decisions, advisory opinions, as well as dissenting opinions. These acts to date, quite seriously affect both the EAEU law and order and the legal systems of the Union member states. Therefore, their mandatory implementation, as well as bringing the law and order of the Union and Member States into line with these acts, is a task of primary importance. This argument is confirmed by the fact that, on the whole, the problem of the implementation by the member states of the international association of the decisions of the judicial authority of this organization is universal for international justice.

So, despite the existence of various international judicial bodies, all of them are established by states and their main task is to clarify and apply international legal norms. The very problem of the enforcement of legal acts of international courts is a small part of the comprehensive issue of compliance by states with international legal norms. In this regard, it should be noted that until recently, the problem of the implementation of international legal norms was not sufficiently covered by jurists. Thus, some authors noted that international lawyers did not consider the problem of compliance with international legal norms, since they believed that virtually all states comply with these rules, and non-compliance is associated more with political issues than legal ones (Schwebel, 1981). Moreover, it has been argued that work on international law focuses more on the codification and entry into force of international law, rather than on the economic and political issues of the formation of such legal norms and the responses of states to them (Hathaway, 2002).

Nevertheless, at the beginning of the XXI century, a legal paradigm shift occurred regarding the issue of compliance with international law, as the number of international courts that provided extremely interesting materials to study the problem

of the implementation of their decisions increased. Thus, legalism, according to which the norms of international law are fulfilled solely in connection with the need to comply with the principle of pacta-sunt servanda, has been replaced by new doctrines that are aimed at exploring the various reasons affecting the observance by states of international legal norms (Giants, 2018).

In general, these doctrines can be divided into two large groups. According to the first group, states comply with international legal norms and execute decisions of international courts for reasons of parity of benefits and costs, which may result from the refusal to fulfill certain obligations (Guzman, 2002). In this case, we are talking about sanctions and coercions applied if states do not fulfill their respective obligations, therefore this concept is most often called the doctrine of coercion. In contrast to this doctrine, representatives of the second group believe that states violate international legal standards unintentionally, and due to a variety of objective and subjective reasons, such as ambiguity and vagueness of contractual obligations, lack of material resources to fulfill these obligations, and lack of coordination in the activities of state bodies. Obviously, in such circumstances, the application of financial sanctions seems ineffective, therefore, non-compliance by states with international legal norms should be considered as a problem that needs to be solved by joint efforts, and not as a punishable misconduct. In this regard, it is necessary to carry out work to prevent and preclude legal violations through a constructive dialogue with states. Moreover, both of the considered concepts note that the execution of acts of an international court is a small part of compliance with international legal norms.

In international law, there are two types of enforcement of legal acts of international courts. The first category includes the execution of a court decision by the party to the dispute, and the second category is related to the quasi-unprecedented nature of legal acts of the court, which can affect not only the legal order of the states involved in the dispute, but also the law of states that did not participate in the consideration of the case.

In particular, the peculiarity of the enforcement of decisions of international courts lies in the fact that these courts operate according to completely different rules than national courts. So, in international law there is no universal coercive mechanism that could force states to enforce certain legal acts of international courts. Often, states, based on the principle of the sovereign equality of all states, indicate the impossibility of such coercion on the part of other states.

Thus, for a full analysis of the problems of the execution of acts of the EAEU Court and their legal consequences, it is necessary to study the statutory features of each individual act, in particular its decisions that are legally binding, and also consider the practice of the EAEU Court and other international courtson the enforcement by subjects of circulation of legal acts of these judicial authorities.

Discussion

Based on the results of familiarization with the submitted application, the Court of the Union first of all makes the relevant decision on procedural issues, namely the acceptance or refusal to accept the application for production, suspension, resumption, or termination of the proceedings. Moreover, the Court has the right to make such rulings in the form of a protocol ruling or as a separate act. In the first version, the decision is recorded in the court session record and announced orally in the presence of all the judges in the courtroom, while the decision is taken as a separate act by the judges in the deliberation room. Herwith, both types of resolution are final and cannot be appealed by the parties to the dispute (Rafalyuk, 2016).

A similar procedure for the issuance of judicial decisions on procedural issues was also provided for in the framework of the EurAsEC Court, in which, in accordance with the provisions of the Rules of Procedure of the Community Court, the Court issued an order on acceptance or refusal to accept, on suspension or termination, as well as on resumption of proceedings within a reasonable time sent it to the parties to the dispute or to the applicant's address (Rules of Court of the Eurasian Economic Community, 2012). At the same time, the statutory documents of the Community Court do not specify exactly what period is considered reasonable, in connection with which it can be assumed that the reasonableness of the term was determined by the Community Court itself, which itself sent these decisions to interested parties.

Thus, the EurAsEC Court had a wide margin of judgement in this regard, as well as the EAEU Court, the EurAsEC Court distinguished two types of judgments. Decisions in the form of a separate judicial act were made by the judges in the deliberation room in the order of making judicial decisions, and the protocol decisions were recorded in the court session record and announced verbally in the presence of all the judges involved. In connection

with the foregoing, it becomes apparent that the procedure for issuing judicial decisions on procedural issues of the EAEU Court has not undergone significant changes from the previously existing order for issuing decisions in the EurAsEC Court, while in the EC of the CIS, not a ruling is adopted on procedural issues, but a court ruling that within thirty days from the date of receipt of the relevant application, is signed by the whole composition of the Collegium of the CIS EC. At the same time, the parties to the dispute have the right to appeal the decision to refuse to accept the application to the Plenum of the CIS EC. And if the application was accepted, then the CIS EC sends copies of this ruling to the parties to the dispute within ten days from the date of its submission (Regulation of the CIS Economic Court, 1997). So, in contrast to the procedure provided for in the framework of the EAEU Court and the EurAsEC Court, the Regulation of the CIS EC clearly sets the terms for making a determination on procedural issues. This procedure not only streamlines the activities of the CIS EC, but also facilitates the work of individual judges in determining procedural terms. While in the EU Court, decisions on the procedural issues under consideration are made only after hearing the views of the judge rapporteur, the General Counsel and are taken in the form of reasoned decisions. Further, having examined the merits of the case, the EAEU Court makes a decision or an advisory opinion on the applications for clarification within 90 days (Rafalyuk, 2016). Moreover, such a decision is binding on the parties to the dispute, while the advisory opinion is only advisory for them in nature.In contrast to this procedure, the EurAsEC Court provided for the adoption of decisions, not only based on the results of the resolution of the disputed case, but also after clarification of the unclear legal norms of the EurAsEC and on applications for making conclusions. Whereas the advisory opinions were made by the EurAsEC Court precisely within the scope of consideration of requests for such opinions. A similar list of the grounds for decision-making by the EurAsEC Court is most likely related to its relatively broad powers. In particular, it is a question of the fact that the EurAsEC Court had prejudicial jurisdiction not provided for in the statutory documents of the EAEU Court. Whereas in the framework of the CIS, the Economic Court can adopt three types of judicial acts. So, the collegium of the EC of the CIS, after considering the case on the merits, issues an act in the form of a decision, and in other cases in the form of a determination. Meanwhile, the full composition of the CIS EC accepts advisory opinions on interpretative requests. Obviously, in general, the legal acts of the aforementioned international courts are not much different from each other. Since the activities of all these judicial bodies are aimed either at resolving a disputed case, or at interpreting international legal norms.

It should be noted that the Court of the Union, as well as the Court of EurAsEC and the CIS EC, makes a decision in the deliberation room by open vote, and the legal positions of each judge, as well as the essence of the discussion, constitute the secret of the deliberation room. Besides, the legal act of the Court is adopted by a majority of votes, and the refusal to vote is not possible. Any legal act of the Court is signed by all the judges who participated in its adoption, including those who submitted dissenting opinions. The Regulation of the EC CIS states that decisions are made in writing and signed by the entire composition of the collegium of the EC CIS without a separate indication of the dissenting opinions of judges. In the EU Court, decisions are signed by the Chairperson and the Registrar of the court session, and are announced in an open manner. In turn, like the decisions of the EAEU Court, its advisory opinions are adopted by a majority vote and signed by the entire composition of the Court, the presiding judge in this case being the last to vote, and the advisory opinions themselves must be translated into the state languages of the member states, with further publication on the website of the Court (Rafalyuk, 2016).

As for the requirements for the content of the legal act of the EAEU Court, as well as the decisions of the EurAsEC Court and the CIS EC, it should consist of an introductory, descriptive, motivational and resolutive part. The introductory part of the legal act covers provisions on the time and place of the decision, the name of the judicial authority, as well as information on the parties to the dispute and other interested parties. Whereas the descriptive part is devoted to the requirements of the applicant, the defendant, and interested parties, as well as the circumstance of the disputed case. The motivational part of the decision shall indicate the legal norms and evidence to which the Court referred when making the decision. The final part contains the findings of the Court in the present case. In general, all decisions of the Court should be logical in content and not allow incompatible provisions. In addition, when making decisions, the margin of judgement of the Court is limited to the issues indicated in the applications, and these decisions cannot change, repeal or create new legal norms of the EAEU or member states. The inclusion in the Statute of the

EAEU Court of such a provision not previously provided for in Eurasian justice is explained by the desire of member states to protect themselves from the risk of judicial activism shown by the previous integration court.

Thus, the statutory documents give the legal right to the EAEU member states not to agree with the decisions and not to execute them because of the illegitimacy of these decisions. If the parties to the dispute do not agree with the decision of the EAEU Court Collegium, they can appeal this decision by submitting a corresponding application to the Appeals Chamber EAEU Court. However, such a complaint must be filed before the expiration of 15 calendar days from the date of the appeal decision. Moreover, any decision of the Appeals Chamber is final and cannot be appealed. It should be noted that the decisions of the Grand Collegium, in contrast to the decisions of the Collegium, are not subject to appeal and come into force from the date of their adoption. Moreover, the main goal of the Court's activity is to create a unified practice by formulating a common and accurate legal position, which is reflected in the decisions of the EAEU Court.

In the judgment in the case "Russian Federation v. Republic of Belarus" of February 21, 2017 No. CE-1-1/1-16-BK, the Court indicated that decisions of the bodies of the Union may be classified as administrative acts of state bodies, which are drawn up in the form of a separate document in print or electronic form, as well as decisions made within the framework of customs procedures and officialized by affixing signatures, stamps and seals to government officials. Moreover, all bodies of the Union must recognize such documents without fail. As a result of the implementation of this decision, the EEC Board adopted decision No. 139 of November 7, 2017 "On documents confirming the status of the EAEU goods", which indicated that the decisions of the EAEU bodies include invoice, shipping list or other transportation documents, specification, a bill of lading, a document confirming the conclusion of a transport expedition agreement, an invoice in which there is an entry "EAEU Goods" to prevent the risk of substitution of such documents (Decision of the EEC Board, 2017). Consequently, in the positive law of the EAEU, the legal position of the Court on the decision of this case has been formed and is gradually developing.

In contrast to the legal positions of the Court, formulated in its decisions, the positions indicated in the advisory opinions are introduced into existing law in a completely different way. Since in this case, the changes primarily relate to national legal norms. For example, in the case of clarification on the application of the Ministry of Justice of the Republic of Belarus of April 4, 2017 No. CE-2-1 / 1-17-BK, the applicant appealed to the Court with the aim of clarifying the possibility of establishing in the national legislation a different authorization other than that contained in the Treaty on the EAEU. The Court pointed out in its advisory opinion that such an interpretation of the legal norm of the Union seems impossible, since the EAEU Treaty provides the Member States with discretion only in the field of prohibitions and not permissions. After making this advisory opinion, the legislative body of the Republic of Belarus drafted the necessary amendments to the Law on Combating Monopolistic Activities and the Development of Competition of December 12, 2013 (Law of the Republic of Belarus, 2013), the validity of which was confirmed by a decision of the Constitutional Court of the Republic of Belarus of December 28 2017 No. R-1117/2017 (Decision of the Constitutional Court of the Republic of Belarus, 2017).This decision notes that since the general rules of competition in cross-border markets are within the exclusive competence of the EAEU, this policy is excluded from national regulation. By the way, it was to this advisory opinion of the Court that the dissenting opinion of Judge E.V. Hayriyan that exclusively national bodies of the member states of the Union should exercise preliminary control over the legal acts of these states. On the whole, this happened because, referring to the practice of the Court of the Union, the Constitutional Court of the Republic of Belarus affirmed the impossibility of deviating from the EAEU norms.

The specificity of the acts of the Court in the national judicial systems of the Member States should be noted. So, in accordance with the Decree of the Plenum of the Supreme Court of the Russian Federation of May 12, 2016 No.18 "On some issues of the application of the customs legislation by courts", acts of the Commission are legal norms regulating customs relations in the Russian Federation as a member of this Union (Decision of the Plenum of the Supreme Court of Russian Federation, 2016). In pursuance of this rule, the judicial authorities of the Russian Federation quite often refer to the legal positions of the EAEU Court. In particular, these are decisions of the Court of the Union on statements of economic entities relating to customs relations. Namely, the decision in the case of General Freight CJSC v. EECof April 4, 2016 No. CE-1-2/2-16-KS and the decision in the case of Sevlad LLC v. EECof April 7, 2016 No. CE-1- 2/1-16-KS. For example, the Ninth Arbitration Court of Appeal in its ruling of

January 17, 2017 No. 09AP-63420/2016 referred to the decision of the EAEU Court in the case of General Freight CJSC, in which objective characteristics and properties of the goods are indicated as the main classification criteria for customs declaration (Resolution of the Ninth Arbitration Court of Appeal, 2017). Similar provisions are also defined in the Decree of the Eleventh Arbitration Court of Appeal dated December 18, 2017 No. A72-20 / 2017 (Decree of the Eleventh Arbitration Court of Appeal, 2017) which specifically emphasizes the practice of the EurAsEC Court in the cases of Zabaikal resurs LLC and Nika LLC of 20 May 2, 2014 No. 2-4/7-2014, as well as the decision of the EAEU Court in the case of General Freight CJSC. In its turn, in the decision of the Thirteenth Arbitration Court of Appeal of March 20, 2017 No. 13AP-1447/2017, the court referred to the decision of the EAEU Court in the case of Sevlad LLC, noting that the expression "similar to them" is used in the trade item 3808 of the commodity nomenclature of foreign economic activity as evidence of a non-exhaustive list of such products. Thus, the legal positions of the EAEU Court have been repeatedly confirmed by the national judicial authorities of the member states, which gives reason to talk about the formation of a stable and uniform judicial practice within the framework of the Eurasian integration system.

In case of disagreement with the general decision of the Court, the statutory documents of the EAEU Court, as well as the EurAsEC Court, provide for the possibility of providing dissenting opinions. In the event of such disagreement, the judge shall have the right to submit in writing his dissenting opinion within a period not exceeding 5 days. A copy of this document is then sent to all interested parties within 6 days. Whereas in the framework of the EU Court, judges unanimously decide, and therefore have no right to give dissenting opinions.

The form and method of execution of the judgments of the EAEU Court are determined by the parties to the dispute. Moreover, the same procedure existed within the framework of the CIS Economic Court, while in the EurAsEC Court the Court itself determined the procedure for the enforcement of decisions and the application of interim measures. If the EAEU Court decides that the legal act of the EEC does not comply with the EAEU standards, even after the entry into force of this decision of the Court, the contested act will continue to be valid until its execution by the EEC. Moreover, in accordance with the Statute of the Court, the EEC must execute this decision before the expiration of 60 calendar days. Nevertheless, if there is a request to suspend the EEC act immediately after the entry into force of this act of the Court, the EAEU Court may satisfy such a statement. Here we are talking about the legal acts of the EEC, since the acts of the Commission, which are not legally binding, cannot be disputed in the Court, as they do not form part of the Union's law. It turns out that the procedure for challenging the legal acts of the Commission is significantly different from the annulment procedure in the Court of the European Union, since within the framework of the EAEU Court only the acts of the Commission are checked for their compliance with the legal norms of the EAEU and nothing more. Whereas in the decision of the EurAsEC Court in the case of OJSC Ugol'naya Kompaniya "Yuzhnyy Kuzbass" dated August 17, 2010 No. 1-7 / 1-2012 (Summary of the judgment of the Grand Collegium of the EurAsEC Court, 2013) it was stated that the recognition of the Commission's act as inconsistent withthe EurAsEC's legal standards shall entail its invalidity from the moment of its adoption, and the fact that the judgment of the Court is ergaomnes in nature, and therefore all Member States should have brought their legal provisions into line with this judgment. Obviously, in this case it was not a matter of eliminating the contradictions or clarifying the unclear rules of law of the EurAsEC, as the full substitution of the norm of the constituent agreement by the norm created by the Court was implemented. Moreover, the Court noted that the fact of the establishment of a Community Court on the basis of an international treaty a priori implies its rule-making function. It seems that in response to this decision of the EurAsEC Court, the EAEU member states significantly limited the jurisdiction of the Court of the Union.

However, in addition to curtailing the powers of the Court to verify the EEC acts for compliance with the provisions of the EAEU legal norms, the member states have included in the statutory documents of the Court of the Union some legal norms that legally allow member states not to comply with the legal acts of the Court. For example, although all decisions of the Court are binding, paragraph 114 of the Statute of the Court states that if a member state fails to comply with a legal act of the Court, another member state may apply to the Supreme Eurasian Economic Councilб and the economic entity – to the Court for appropriate action on its execution. At the same time, such applications by individuals are sent by the Court of the Union to SEEC to make the necessary decision on this issue. Similar rules were in effect in the EurAsEC Court and in the CIS EC, in which, if a court decision was not enforced, the

member states were entitled to apply to the supreme body of these associations (Neshataeva, 2015). Thus, the process of execution of the legal acts of the Court is due to the significant influence of the EEEC, which is essentially a body representing the interests of the EAEU member states than the Union itself. On the one hand, indeed, the SEEC can contribute to the implementation of the decisions of the Court, since it is the heads of state and government that have the highest powers in each of the member states, and therefore has the right to force the parties to the dispute to comply with the relevant decision of the Court. However, such a procedure for the execution of legal acts of the Court is fraught with a limitation of the independence of the Court, which already has very narrow jurisdiction. Moreover, if SEEC fails to reach consensus, then the judgment will not be enforced. Nevertheless, it should be noted that there have been no cases of non-enforcement of legal acts of the EAEU Court.

It is obvious that the mechanism for the enforcement of legal acts of the EAEU Court is weak compared to a similar EU system. Since, as already noted above, the EU Court has the highest percentage of execution of its decisions, as well as its prejudicial opinions – 97%. In general, the EU Commission has the authority to monitor the implementation of the legal acts of the Court of Justice of the EU, which, if a violation is discovered, carries out the necessary proceedings and then applies to the judicial authority of the Union to confirm the fact of such violation. At the beginning of its activities, the EC began such a process only in cases of special need, but now the process is quite formalized. Since, every year, the EC initiates many such investigations. However, in the event a member state fails to fulfill its contractual obligations, the EC most often solves this problem through dialogue with that state, and therefore more than 80% of such cases are regulated out of court (2007).

It should be noted that initially the Court of Justice of the EU was only entitled to make declarative decisions on the fact of violation by the state of its obligations. But this procedure did not give positive results in this area, in connection with this, the Maastricht Treaty granted the EU Court the right to impose a fine and penalties for each day of delay in the implementation of legal acts of the EU Court. Since, until the establishment of financial sanctions, not all acts of the Court of Justice of the EU were voluntarily enforced by EU member states (Tamm, 2013).

For example, in the European Commission v. France case of July 12, 1990 No. C-236/88 (Commissionv. France, 1990), despite the fact that the defendant's refusal to keep social benefits to a pensioner who moved to live in Italy was found to be inappropriate by the EU Court of Law EU, France categorically refused to implement this decision. Moreover, the conflict on this issue was resolved only after the initiative of France was amended by Council Regulation No. 1408/71 on the application of social security schemes for working people, self-employed persons and members of their families moving in the Community (Council Regulation, 1992), which made the execution of an act of the Court meaningless. Whereas in the European-Commission v. France case of July 12, 2005 No. C-304/02 (Commission of the European Communitiesv. French Republic, 2005), due to the defendant's failure to comply with the decision of the EU Court in the earlier Commission v. France case of June 11, 1991 No. C-64 / 88 (Commission of the European Communitiesv. French Republic, 1991), the Court of the Union for the first time imposed a fine and a penalty on a violating state. He noted that the fine is used to prevent future violations, and the penalty is aimed at the quick and full implementation of the decision of the EU Court of Justice and is not a punishment tool. However, it is obvious that even the highest financial sanctions cannot solve the whole problem of the implementation of the decisions of the EU Court. So, in 2015, the EU Commission examined seven separate cases that were not executed even after financial sanctions were applied to violating states. For example, in European Commission v. Italian Republic case of July 16, 2015 No. C-653/13 (European Commissionv. Italian Republic, 2015), a fine of twenty million euros was imposed on the defendant and penalties amounted to one hundred twenty thousand euros for each delayed day of execution. Whereas in the European Commission v. Hellenic Republic case of October 15, 2015 No. C-167/14 (European Commissionv. Hellenic Republic, 2015), the defendant was fined ten million euros and a penalty of more than three million euros for every delayed six months of the decision enforcement.

As for the prejudicial conclusions of the Court of Justice of the EU, from the moment of their first appearance in the Rome Treaty to the present, the legal status of these judicial acts has not been determined. However, the level of enforcement of the prejudicial findings of an EU court is actually incredible. Since, as already noted above, only in 3% of cases the national courts of the EU Member States refused to comply with these conclusions. This phenomenon is explained by the extremely successful position

of the EU Court to disseminate its doctrinal views. Understanding that it is impossible to compel the domestic courts to follow its judgments, the Court of Justice of the European Union organizes a dialogue with the national courts of the Member States, in which both judicial systems remain in a mutually beneficial position. As a result of this cooperation, the conclusions of the EU Court are in good faith executed by the courts of the Member States, which perceive the consent to comply with the legal norms of the EU Court as their legal right, and not an obligation. Therefore, even in the EU Court of Justice, many decisions may not be enforced by EU member states.

Thus, the EAEU Court has the right to make legally binding decisions, as well as advisory opinions, which are advisory in nature. For the purpose of a multilateral analysis of this problem, the charter qualities of each individual act of the EAEU Court were examined, as well as the practice of implementation by the member states and economic entities of the legal acts of the Court itself and other international judicial bodies. Thus, it was found that in international courts the performance indicators of judicial decisions vary significantly. For example, within the UN, the decisions of the International Court of Justice are executed by 72%, the decisions of the WTO DSB by only 66%, and the binding decisions of the ECHR are implemented by 80%. Moreover, the EU Court has the best indicators, with 82% of all decisions and 97% of advisory opinions being executed by the relevant entities. While this indicator is relatively low for the Inter-American Court of Human Rights, where only 4% of decisions are enforced (Ispolinov, 2017). As for the EAEU Court, in practice this body has not yet encountered cases of non-enforcement of its decisions. It was also revealed that the issue of the enforcement of international court decisions is an integral part of the broader issue of compliance by states with their treaty obligations. At the same time, while some states comply with these norms in connection with the negative impact of financial sanctions that may follow from the failure to fulfill such obligations, others argue that the fact of non-compliance with international law is caused by objective and subjective circumstances independent of states. Despite the position taken by a particular state, the problem of the enforcement of decisions of international courts always remains part of the problem of fulfillment by states of their international legal obligations.

Thus, in the doctrine of international law, there are two types of enforcement of legal acts of international courts. In particular, court decisions can be executed by the party losing the case, or these decisions are executed because they can directly affect the rule of law of states that did not participate in the consideration of the case. As for the EAEU Court, the form and method of execution of decisions is determined by the parties to the dispute. The same procedure existed in the CIS EC, and in the EurAsEC Court, the Court itself was empowered to determine the order of execution of decisions, as well as for security measures. Moreover, despite the fact that the decisions of the EAEU Court are binding, if they are not executed, the interested entity can apply to the Supreme Eurasian Economic Council to take appropriate measures for its implementation. A similar procedure was in force in the Court of the EurAsEC and the CIS EC, where in case of failure to comply with judicial acts, member states were entitled to apply to the supreme body of the association. It turns out that the process of implementing the decisions of the Court depends on the will of the SEEC, which actually represents the interests of each individual member state of the Union, but not the association itself. It seems that such an order of enforcement of the judgments of the EAEU Court limits the independence of the Court, the jurisdiction of which is already significantly narrowed compared to the previous integration court. Also, if it is not possible to establish consensus within the framework of the SEEC, a circumstance may arise in which court decisions cannot be enforced at all.

Conclusion

As a result of consideration of the specific competence and function of the EAEU Court, the following conclusions were drawn.

Since the beginning of the functioning of the EAEU Court, and to this day, a total of 36 applications have been received by this body, of which 17 on dispute resolution, 14 on clarification and 5 on appeal of decisions. However, out of all appeals, only 27 were accepted for legal proceedings, since 9 applications were refused acceptance for proceedings and 6 applications were left without movement. Furthermore, most of the applications that were not accepted were sent by business entities. So, of the 9 applications that were refused to be accepted for proceedings, only one was sent by a member state of the EAEU. Moreover, the application was returned only in connection with the fact that the applicant withdrew his application until it was accepted for production (Official website of the EAEU court, 2020). The EAEU Court has two different competencies, which are the resolution of disputes and

the provision of advisory opinions. As part of the competence for the settlement of disputes, the Court resolves cases on the basis of the applications of member states and business entities. Member states are privileged applicants due to the fact that they can not only appeal against the decisions, actions or inactions of the Commission, but also have the right to apply directly to the EAEU Court with claims against other member states, while business entities have the right to appeal decisions or EEC actions and inactions. In contrast, in the framework of the Court of Justice of the EU, it is not only Member States and private individuals that are subject to appeal to the Court of Justice of the EU, since EU institutions and their employees can also protect their rights in the judicial body of the Union. Whereas in the former EurAsEC Court, disputes were considered at the request of the parties, Community bodies and business entities. In this case, the parties were understood only as Member States of the Community.

On the other hand, the EAEU Court has the right to provide advisory opinions at the request of the Member States and bodies of the Union, as well as employees and officials of the EAEU bodies. At the same time, the latter can apply to the judicial body of the Union only regarding labor issues, which obviously reduces the substantive competence of the EAEU Court, since the largest number of situations requiring clarification of the legal norms of the Union appear precisely in the course of labor disputes among employees of the EAEU bodies.

Unlike decisions, advisory opinions are acts of a recommendatory nature, and are aimed at a uniform explanation of integration law by the member states of the Union. Nevertheless, although part of the Union's law is international treaties of the Union with third states, the Court can clarify their provisions only if such a procedure is provided for in the text of the international treaty. It seems that this is due to the fact that the parties to such agreements are not only member states of the Union, but also entities whose activities are not governed by the legal norms of the EAEU. Since there is no legal hierarchy in international law, it is impossible to regulate such agreements by the legal order of only one of the parties to the agreement. In this regard, the clarification of these contracts is usually carried out through the creation of an arbitration court.

Further, it was revealed that the competence of the EAEU Court to clarify the legal norms of the Union differs from the similar competencies of the EurAsEC Court and the EU Court. Thus, the subjects of the appeal to the Community Court with requests for advisory opinions were the member states and bodies of the EurAsEC, as well as the higher courts of the member states of the Community. This order was much more effective than the current order, since it was possible to establish a dialogue between the Community Court and the national courts of the Member States. Whereas in the EAEU Court, the highest national judicial bodies can request these conclusions only by contacting the authorized bodies of the member states. However, it should be noted that only the higher courts of the Member States could request the EurAsEC Court to clarify Community legal rules, while their other courts did not have this right. Meanwhile, the EU Court has the right to provide prejudicial opinions at the request of national courts of all levels, as well as at the request of member states and bodies, as well as employees of the bodies of the Union.

Many significant legal positions of the EAEU Court were developed not within the framework of its decisions, as happened in the EU Court, but within the framework of its advisory opinions.

So, in these documents the Court of the Union formed the concepts of direct action and direct application of the Union's legal norms, and they also detail the conflicting provisions of the EAEU legal norms. In its decisions, the EAEU Court determined that the current EAEU agreement must be implemented in good faith and that a member state cannot refer to the norms of its national legislation as an excuse for not fulfilling the EAEU legal norms. Further, it was revealed that international treaties that are not part of the Union's law are applied on the territory of the EAEU, provided that all member states of the Union have signed this international treaty, as well as if this treaty regulates legal relations that are part of the EAEU common policy area. Further, it was determined that the legal positions of the EurAsEC Court serve as a precedent for the EAEU Court, since the decisions of the Community Court continue to operate in their previous status.

Consequently, the jurisdiction of the EAEU Court ondispute resolution, as well as its jurisdiction to provide advisory opinions, have their own functional characteristics. Thus, according to the decisions of the Court, many important legal positions were formed, and in the advisory opinions, the Court determined the special nature of the Union's law and order. The execution of these acts is of paramount importance for the effective functioning of the Union, since it is they who are developing the EAEU legal system.

In order to improve the functioning of the EAEU Court, the following practical

recommendations were developed based on the results of the study.

First, the EAEU Court must be empowered to provide prejudicial opinions. Since the absence of such jurisdiction negatively affects the formation of a productive judicial dialogue between two different judicial systems. At the same time, the jurisdiction of the Court should be based on international judicial practice of issuing prejudicial opinions, and not on the experience of the former EurAsEC Court. Secondly, the right should be given to the EEC to initiate a lawsuit against the EAEU member states that violate their obligations under Union law. Since the practice of international justice itself proves that states, guided by political considerations, rarely appeal to an international court against another state. Whereas the Commission, which is essentially a supranational body of the EAEU, can act outside the political environment of the Member States of the Union, and thereby independently monitor the implementation of integration legal norms. In addition, it is necessary to expand the right of individuals to apply to the EAEU Court, since the rights and legitimate interests of not only business entities, but also representatives of other areas may be infringed by illegal decisions, as well as actions and inaction of EAEU bodies. It is also necessary to change the procedure for the execution of legal acts of the Court EAEU, since the fact that the execution of the judgments of the EAEU Court is ensured only by the Supreme Eurasian Economic Council, which does not have the right to establish any sanctions against the state, it nullifies the effectiveness of the activities of the EAEU Court.

It seems that the implementation of the above recommendations to increase the efficiency of the functioning of the EAEU Court will contribute to the further development of the judicial system, and will also positively affect the practice of the national courts of the Member States of the Union.

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