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**THE EURASIAN ECONOMIC
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THE EURASIAN ECONOMIC UNION: AN EU-LIKE LEGAL ORDER IN THE POST-SOVIET SPACE?²

The Eurasian Economic Union (EAEU) is an emerging regional organization of economic integration in the post-Soviet space. Following the limited success of previous integration attempts, it seeks to pursue deeper integration, borrowing features from the EU.

The EAEU possesses a complex system of elements of an emerging legal order, some of which have distinct similarities with the EU, but others are decisively different. This paper analyses these features in order to find whether the legal changes that accompany the creation of the new entity allow ensuring the effective functioning of the EAEU and whether the respective legal order is autonomous similar to that of the EU.

The author argues that the EAEU lags behind the EU in terms of the autonomy of the legal order and in its ability to ensure the effective functioning of the organization. Supranational features are limited, while it relies predominantly on intergovernmental elements with a view to preserve the interests of all Member States.

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Introduction

The fall of the Soviet Union has seen vast political, economic and legal changes in the newly independent states. New constitutions were adopted with a view to accommodate the new national and international realities. In the meantime, the newly independent states almost immediately pursued integration processes. Three of them—Estonia, Latvia and Lithuania—started the long process of integration into the European Communities and, later, the EU. Most other post-Soviet countries pursued integration among themselves, leading to new regional international organizations, free trade areas, customs unions, bilateral integration initiatives, and even a confederation.³ New institutions appeared quickly, however making them work has proven to be difficult.

The Eurasian Economic Union (EAEU) is a new international organization in the region launched on 1 January 2015 and currently consisting of five Member States: Armenia, Belarus, Kazakhstan, Kyrgyzstan and Russia. The organization builds upon past regional integration initiatives, in particular the Eurasian Economic Community (EURASEC) and the Russia-Kazakhstan-Belarus Customs Union. It has been constantly reiterated on different levels, including the highest political level, that the EAEU follows the best practices of the most successful example of supranational integration—the EU.⁴

The EU is, however, a unique case in the law of international organizations with a number of distinctive features. The concept of the autonomy of the legal order of the EU has been used to construct this uniqueness. This idea dates back to the first cases of the European Court of Justice (ECJ), when in 1963 the Court recognized the special features of the European Economic Community and famously deemed it “a new legal order of international law”,⁵ eventually even dropping the word “international”,⁶ differentiating European law from traditional public international law. The ECJ has made use of the concept of an autonomous legal order in its legal reasoning on multiple occasions.⁷ The Court has never given a definition of “autonomy”,⁸ however

³ See Alexander Libman and Evgeny Vinokurov, *20 Years of Post-Soviet Integration: Holding-Together Regionalism* (Palgrave Macmillan, New York, 2012).

⁴ See Guillaume Van der Loo and Peter Van Elsuwege, “Competing Paths of Regional Economic Integration in the Post-Soviet Space”, 37(4) *Review of Central and East European Law* (2012), 421-447, at 433. See also Roman Goncharenko, “Russia plans Eurasian Union on EU model”, available at <<http://www.dw.de/russia-plans-eurasian-union-on-eu-model/a-15615047>>.

⁵ Case 26/62, *Van Gend en Loos*, Judgment of the Court, (5 February 1963), ECR 1, p. 12.

⁶ Case C-6/64, *Costa v ENEL*, Judgment of the Court, (15 July 1964), ECR 585, p.593.

⁷ See the following case-law: Case C-6/64, *ibid.*; Case 11/70 *Internationale Handelsgesellschaft*, Judgment of the Court, (17 December 1970) ECR 1125; Case 327/84 *Ekro v Produktschap voor Vee en Vlees*, Judgment of the Court (Fifth Chamber) (18 January 1984) ECR 107; Case C-287/98 *Linster*, Judgment of the Court, (19 September 2000), ECR I-6719; Opinion 1/91 *EEA Agreement*, Opinion of the Court, (14 December 1991), ECR I-6079; Opinion 1/00 *ECAA Agreement*, Opinion of the Court, (18 April 2002), ECR I-349; Opinion 1/09 *Agreement on the European and Community Patent Court*, Opinion of the Court (Full Court), (8 March 2011), ECR I-1137; Case C-459/03 *Commission v Ireland*, Judgment of the Court (Grand Chamber), (30 May 2006), ECR I-4635; Joined Cases C-402/05 P and C-415/05 P *Kadi and Al Barakaat International Foundation v Council and Commission*,

it has identified a number of features thereof, the main being “its primacy over the law of the Member States and the direct effect of a whole series of provisions which are applicable to their nationals and to the Member States themselves”.⁹

Such autonomy is also confirmed in the decisions of courts and constitutional control bodies of certain EU Member States, however not without limits.¹⁰ To accommodate the features of that autonomy, a number of countries had to introduce changes to their constitutions or adopt separate constitutional acts.¹¹

This article unpacks the legal changes that accompanied the creation of the new entity and explores whether they ensure the effective functioning of the EAEU, and whether the respective legal order has the prerequisites of autonomy similar to that of the EU. The paper adopts the systemic method of analysis proposed by Sørensen.¹² The essence of the method is to engage with the organization in its entirety by examining, both individually and in their interplay the organizational structure and competence; institutions and their functioning; specific features of law-making; the application of the law; and dispute resolution. Therefore, the legal order of the EAEU is explored by gradually revealing its nature, institutional structure and functioning, legal system and the ability of the EAEU Court to protect and enforce it. This analysis is the beginning of an inquiry, given the early stages of the development of the organization, and absence of considerable practice to analyze and rely on. This article, nevertheless, gives an essential overview of the preconditions and hints at the direction such practice may take.

Judgment of the Court (Grand Chamber), (3 September 2008), ECR I-6351. See also Jan Willem van Rossem, “The Autonomy of EU Law: More is Less?” in Ramses A. Wessel and Steven Blockmans (eds.), *Between Autonomy and Dependence: The EU Legal Order under the Influence of International Organizations* (T.M.C. Asser Press, The Hague, 2013); Max Sørensen, “Autonomous Legal Orders: Some Considerations Relating to a Systems Analysis of International Organisations in the World Legal Order”, 32(3) *The International and Comparative Law Quarterly* (1983), 559-576.

⁸ See detailed analysis in René Barents, *The Autonomy of Community Law* (Kluwer Law International, The Hague, 2004).

⁹ Opinion 1/91, *op.cit.* note 7, para 21.

¹⁰ See Jenő Czuczai, “The Autonomy of the EU Legal Order and the Law-making Activities of International Organizations: Some Examples Regarding the Council’s most Recent Practice”, 31 *Yearbook of European Law* (2012), 453; Sergei Kashkin et al., *Pravo Evropeiskogo Soiuz: Tom 1. Obshchaia chast’*, (Iurait, Moscow, 2013), 128.

¹¹ See e.g. The Constitution of the Republic of Estonia Amendment Act, 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, available at: <http://www.lrs.lt/upl_files/Lietuvos_pirmininkavimas_ES/dokumentai/CONSTITUTIONAL_ACT.pdf>; Additionally see Alfred E. Kellermann et al. (eds.), *The Impact of EU Accession on the Legal Orders of New EU Member States and (Pre-)Candidate Countries: Hopes and Fears* (TMC Asser Press, The Hague, 2006). See also Article 23 of the Basic Law for the Republic of Germany of 1949 (rev. 2012), English version available at <https://www.constituteproject.org/constitution/German_Federal_Republic_2012?lang=en> and Article 88 of the Constitution of France of 1958 (rev. 2008), English version available at <https://www.constituteproject.org/constitution/France_2008?lang=en>.

¹² Sørensen, *op.cit.* note 7, 563.

The EAEU and its Institutions

The EAEU Treaty defines the EAEU as an international organization of regional economic integration that shall have an international legal personality (Art.1(2) of the EAEU Treaty)¹³. Therefore, it is clear that the integration pursued is economic, which means, that non-economic integration (e.g., political, cultural, social, etc.) is beyond the EAEU framework and will probably develop by means of other agreements, other organizations, or by amending the Treaty in the future. The economic focus of the integration is additionally underlined by the absence of an inherently political parliamentary body within the EAEU, even though this was envisaged in the first draft of the treaty.¹⁴ No other bodies for citizen participation are envisaged either, which, taken together, shows a crucial conceptual difference from the EU. However, as evidenced by practice of regional integration, economic integration can gradually “spill over” into other fields. Consequently, the organization can, in principle, transform into an organization of a wider competence.

The “regional” component of integration normally limits the possibility for the organization to expand within specific geographical boundaries. Even though the EAEU Treaty does not specify this area, one can deduce the region of Eurasia. However, there are different understandings of “Eurasia” in social sciences,¹⁵ the most common, also used within this contribution, is Eurasia as the post-Soviet space. At the same time, it is not entirely clear if the drafters had the same thing in mind. In addition, the provisions on accession to the organization do not mention Eurasia as a region where a state should belong (Art.24(1) EAEU Treaty). This is different from the EU, where there is a clear geographical criterion of accession, where only European states can become EU members (Art.49 TEU).

The explicit reference to the EAEU’s international legal personality has most likely been inserted to preclude speculations, which, for example, took place regarding legal personality of the European Communities and the EU during the initial stages of their development.¹⁶ International law doctrine suggests that legal personality depends on an organization’s constitutional status, actual powers and practice, significant factors being “the capacity to enter into relations with states and other organizations and conclude treaties with them, and the status it has been given under

¹³ Treaty on the Eurasian Economic Union (29 May 2014), courtesy English translation, available at <<https://docs.eaeunion.org/en-us/>>.

¹⁴ Draft Treaty on the Eurasian Economic Union (27 December 2012), on file with the author.

¹⁵ Evgeny Vinokurov and Alexander Libman, *Evraziiskaia kontinental'naia integraciia*, (Centre for Integration Studies, Eurasian Development Bank, Saint Petersburg, 2012), 12.

¹⁶ See e.g. Jaap W. de Zwaan, “The legal personality of the European Communities and the European Union”, 30 *Netherlands Yearbook of International Law* (1999), 75-113; Ramses A. Wessel, “Revisiting the International Legal Status of the EU”, 5 *European Foreign Affairs Review* (2000), 507-537. More generally, it was also an issue for the United Nations, which was resolved by the International Court of Justice in the *Reparation for injuries suffered in the service of the United Nations, Advisory Opinion*, I.C.J. Reports 1949, p. 174.

municipal law”.¹⁷ The EAEU Treaty provides for the right of the Union to engage in international cooperation with states, international organizations, etc., and independently or jointly with the Member States conclude international treaties therewith on any matters within its jurisdiction (Art.7 EAEU Treaty). The Treaty also provides for the immunities of the EAEU institutions and members of the Commission Board, judges, officials and employees from national jurisdiction (Annex 32 EAEU Treaty).

One of the main aims of the EAEU as stipulated in the treaty (Art.4) is to create a single market of goods, services, capital and labor within the Union. This resonates with the EC’s/EU’s aims. However, the Kazakhstani legal scholar Baildinov would probably not agree, as according to his reading of the aims of the EAEU Treaty, the common interests of the states are narrowly directed only at securing the economic development of the respective countries, making it different from the wider aims of the EU treaties.¹⁸ At the same time, the aims of a treaty should be analyzed coupled with the provisions of the preamble. The latter in the EAEU Treaty refers to the desire to deepen solidarity and cooperation between nations, which is comparable to the “ever closer union of nations” in the preamble of the Treaty on European Union.¹⁹

Institutionally, the EAEU Treaty creates a distinctive system of interrelated bodies: the Supreme Eurasian Economic Council (the Supreme Council), the Eurasian Intergovernmental Council (the Intergovernmental Council), the Eurasian Economic Commission (the Commission), and the EAEU Court. The highest EAEU institution is the Supreme Council, which consists of the heads of states (Art.10 EAEU Treaty). It considers the issues of principle regarding the functioning of the EAEU, determines the strategy, directions and perspectives of integration development and makes decisions to implement EAEU objectives. One of the main competences of the Supreme Council is to control all budgetary issues. Overall, based on its function, the Supreme Council is comparable to the European Council in the EU, even though the former has more powers. The next institution is the Intergovernmental Council, which previously was only a formation of the Supreme Council consisting of the heads of Member States’ governments. Essentially, it remains the same, even though it is established as a separate body. It has within its competence the realization and control of the compliance with the Treaty, international treaties within the EAEU framework, and the decisions of the Supreme Council.

¹⁷ Malcolm N. Shaw, *International Law*, 6th ed. (Cambridge University Press, Cambridge, 2008), 260. More specifically, according to Ian Brownlie, the “indicia of legal personality” include 1) a capacity to make treaties; 2) a capacity to present international claims by diplomatic procedures or in other available forms; 3) a liability for the consequences of breaches of international law; 4) privileges and immunities in relation to the national jurisdictions of states. However, he suggests, that it is not necessary for an entity to bear all the indicia. See Ian Brownlie, *The Rule of Law in International Affairs* (Kluwer Law International, The Hague, 1998), 36.

¹⁸ Ergali Baildinov, “Dogovor o Evraziiskom ekonomicheskom soiuze: shag vpered, dva shaga nazad”, 77(10) *Evrasiiskii iuridicheskii zhurnal* (2014), 25-33, at 25.

¹⁹ Consolidated version of the Treaty on European Union (26 October 2012) OJ C326/16.

The Commission is the permanent governing body of the EAEU, which consists of two distinct parts: the Commission Council and Commission Board (Art.18(1) EAEU Treaty). The Commission Council performs the overall regulation of the integration processes of the EAEU and the overall management of the Commission activities. The Council consists of one representative from each Member State, who are deputy heads of government. Therefore, this position is political. The Commission Board is the executive body of the Commission. The Board consists of three representatives per Member State. The Supreme Council approves the composition of the Board and the duties of its members. The Board is the only body in the whole Union that has an exhaustive list of competences identified (para 43 Commission Regulation).²⁰ One of the important competences of the Board is the monitoring and control of compliance with the international agreements in the EAEU framework.

The last institution, the EAEU Court, is tasked with ensuring the uniform application of the Treaty by the Member States and the institutions of the Union (Art.19 EAEU Treaty). The Court consists of two judges from each Member State. The Supreme Council confirms nominations from Member States and can dismiss them (paras 10 and 11 Statute).²¹ However, the Member States (as well as the Court and the judges themselves) can also initiate the dismissal of a judge (para 13 Statute of the Court).

The institutional structure is visualized in the figure below, also reflecting the non-unitary structure of the Commission.

²⁰ Regulation on the Eurasian Economic Commission, Annex 1 to the Treaty on the Eurasian Economic Union (29 May 2014), courtesy English translation, available at <<https://docs.eaeunion.org/en-us/>>.

²¹ Statute of the Court of the Eurasian Economic Union, Annex 2 to the Treaty on the Eurasian Economic Union (29 May 2014), courtesy English translation, available at <<https://docs.eaeunion.org/en-us/>>.

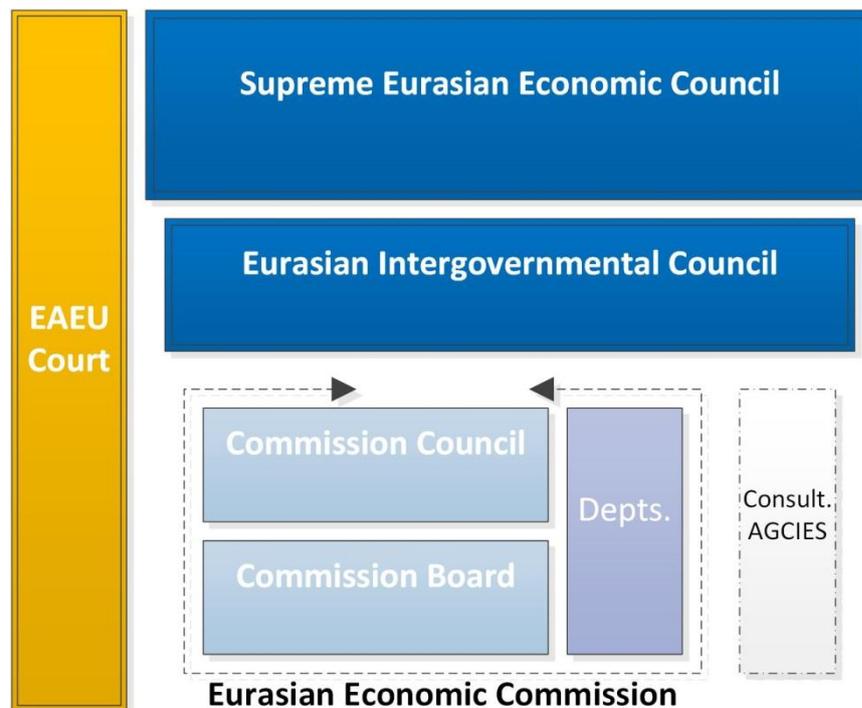


Fig. 1. EAEU Institutional Structure.

This structure, even though to a certain degree similar to that of the EU, is not entirely comparable and it is a difficult task to clearly identify the corresponding institutions. One of the most striking differences is the structure and composition of the EAEU Commission. The official EAEU web-site describes the Commission as “a permanent supranational regulatory body of the Union”.²² The Commission (together with its predecessor, the Commission of the Customs Union) is therefore the first institution in the post-Soviet space to be officially deemed supranational.²³ However, even though the EAEU Commission indeed possesses certain supranational features, it clearly lacks others, which diminishes the supranational effect.²⁴ In fact, the very first principle under which the Commission operates reveals the intergovernmental elements of this institution: it shall ensure mutual benefit, equality and *respect for the national interests of the Member States* (point 2 Commission Regulation, emphasis added), rather than interests of the Union.

²² Official web-site of the EAEU, available at <<http://www.eaeunion.org/?lang=en#about-administration>>.

²³ The EAEU Treaty itself does not use this terminology. Moreover, the word supranational is used in the Treaty only twice, both times not explicitly referring to the Commission. First, in the Article 38 on absence of supranational competence of the Union in the sphere of foreign trade in services. Second, in the Article 103 on supranational authority to regulate financial markets to be established in 2025. This, however, seems to be an unfortunate drafting of the Treaty as “supranationality” is not defined, while by denying supranational competence in one field it clearly implies supranational competence in another/others.

²⁴ The issue of supranationality is complex and institutional supranationality forms only part of it. Arguably, the most comprehensive list of fundamental characteristics of a fully supranational organization was developed by Henry G. Schermers and Niels M. Blokker:²⁴ 1) the organizations must have powers to adopt decisions binding upon member states; 2) the institutions, that adopt such decisions cannot be fully dependent on the cooperation of all member states, which is ensured through majority voting and an institution composed of independent individuals; 3) the organization should be empowered to make rules which directly bind the inhabitants of the member states (direct effect); 4) the organization should have the power to enforce its decision; 5) the organization should have some financial autonomy; 6) unilateral withdrawal should not be possible (without the collaboration of the supranational organs). See Henry G. Schermers and Niels M. Blokker, *International Institutional Law: Unity within Diversity*, 5th ed. (Martinus Nijhoff Publishers, Leiden 2003), 46-47.

Moreover, it is not even entirely correct to analyze the Commission as one institution. It is rather an organization within an organization, which has an institutional and decision-making structure of its own.²⁵ Therefore, it is difficult to refer to the body as a whole as a supranational one, at least in terms of its composition. The Commission Council is clearly an intergovernmental body, as, apart from other features, its members are at the same time members of governments and therefore are representatives thereof. Decisions are taken by consensus only, therefore, only a part of the Commission—the Commission Board—can be considered supranational as it consists of members, which are obliged to act independently from their governments (points 34(1) and 56(2) Commission Regulation), and where decisions are adopted by qualified majority (though by consensus in certain cases (Art.18(2)(3) EAEU Treaty)).

Hence, only the Board, and not the whole Commission, can be compared to the European Commission, which consists of independent members. This leaves us with the Commission Council as a separate body broadly comparable to the Council of the EU, which represents the interests of the governments. However, even in this case, voting in the Council of the EU currently takes place by a qualified majority in various fields, introducing a supranational element into this intergovernmental institution. This is not the case in the Commission Council, where all the decisions are taken by unanimity.²⁶

Based on this short overview, the broad correspondence of the EAEU and EU institutions is shown in the table below.

²⁵ In fact, there are scholars which contend that the Commission, which existed before the creation of the EAEU, had all the features of an international organization and could be identified as a *sui generis* international organization of its own. See S.I. Glazev, V.I. Chushkin, and S.P. Tkachuk, *Evropeiskii Soiuz i Evraziiskoe ekonomicheskoe soobshchestvo: skhodstvo i razlichie protsessov integratsionnogo stroitel'stva* (Viktor media, Moscow, 2013), 125.

²⁶ It is true, that most decisions are still reached by consensus, but reaching consensus under the shadow of the vote is altogether different from reaching it under the shadow of the veto. See Joseph H.H. Weiler, "The Transformation of Europe", 100 *The Yale Law Journal* (1991), 2461. See more on the EAEU decision-making below in the article.

Tab. 1. Correspondence of EU and EAEU institutions

EU	EAEU
European Council	Supreme Council Intergovernmental Council ²⁷
Council of the EU	Commission Council
European Commission	Commission Board
European Parliament	-
CJEU	EAEU Court

Even though it is possible to identify broad correspondences between EAEU and EU institutions, EAEU decision-making is decisively different from that in the EU. EU decision-making is primarily based on a legislative process involving several institutions, where the European Commission has executive functions and virtually exclusive proposal-making competence.²⁸ In the EAEU each institution adopts its own acts separately. There has been an improvement upon previous post-Soviet systems, where the decisions adopted at the lowest levels of the institutional structure needed the approval of the highest institution. The change is plausible; however, there is still a system in place, which can undermine independence and supranationality. The system is informally called “the Belarusian elevator”.²⁹ The substance of the procedure is that any decision adopted at a lower level of the institutional structure can potentially be challenged at a higher level of the institutional ladder, up to the highest level of the Supreme Council (Art.12 and 16 EAEU Treaty). Given that first, all of the following levels are intergovernmental in terms of their composition and unanimous decision-making, and second, Member States can also initiate the challenge, the Member States remain in control of the decision-making process, backed by what is essentially a veto power. Evidently, this system has been built to ensure that the interests of the Member States are preserved. However, it hardly allows the Commission, or its parts, to be autonomous actors in the integration process.

²⁷ The Supreme Council and the Intergovernmental Council were grouped into one slot as they were previously used to be two formations of one institution, and the Intergovernmental Council also takes the role of the Supreme Council when it is not in session. However, it is still only a rough comparison.

²⁸ See Paul Craig and Gráinne de Búrca, *EU Law : Text, Cases, and Materials*, 5th ed. (Oxford University Press, Oxford, 2011), 121-157.

²⁹ The notion has been picked from the presentation of the head of the Eurasian Integration Unit of the Ministry of Foreign Affairs of the Republic of Belarus Mr. Viktor Šych at the seminar “Challenges of the integration on the way to the Eurasian Economic Union” that took place on 10 December 2013 in Minsk. The reason for the notion is that the system was proposed by the Belarusian side to the negotiations, to which the other members agreed.

“The Law of the Union”

The EAEU Treaty provides for the notion of the “law of the Union”, which is not defined, but according to Article 6, 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 decisions of the EAEU Commission, as provided by the Treaty, are the only acts that have a normative character and are directly applicable on the territory of Member States. This underlines once again the supranational features of the Commission Board and adds a supranational feature to the intergovernmental Commission Council. However, it is limited in the latter as long as the acts of the Commission Council are adopted by unanimity. In contrast, the intergovernmental Council of the EU uses qualified majority voting in most cases.

The major innovation within the law of the EAEU is the principle of direct applicability.³⁰ In most of the previous cases, to have legal effect, the acts had to be implemented using national procedures. Now, certain acts do not require any implementation procedures and in theory become part of national law immediately.

As mentioned above, direct effect³¹ is one of the main features of the autonomous legal order of the EU. Directly effective norms are regarded as the law of the land in the Member States in the application of EU law. An important part of this feature is that individuals can directly apply such norms in national courts. The courts, in their turn, are obliged to apply such norms as if they were adopted by domestic legislative bodies. The approach taken by a Member State towards international law does not change this, and both monist and dualist countries must equally apply such norms. Therefore, in case of violation, Member States can face suits from individuals before their own courts within their own legal order.³² The second main feature of autonomy is the supremacy of EU law.³³ This feature makes the legal rule *lex posterior derogat anterior* inapplicable in cases where a national legal norm does not comply with a norm of EU law. Regardless of the time of its adoption, EU law prevails.

³⁰ Initially, it was introduced with the establishment of the Commission of the Customs Union in 2011.

³¹ Differences between direct effect and direct applicability are omitted since this goes beyond the scope of this contribution. See e.g. Thomas Eilmansberger, “The Relationship between Rights and Remedies in EC Law: In Search of the Missing Link”, 41(5) *Common Market Law Review* (2004), 1199-1246; J.A. Winter, “Direct Applicability and Direct Effect: Two Distinct and Different Concepts in Community Law”, 9(4) *Common Market Law Review* (1972), 425-438; Craig and de Búrca, *op.cit.* note 28, 105.

³² Weiler, *op.cit.* note 26, 2414.

³³ First established by the ECJ in Case C-6/64, *op.cit.* note 6.

In contrast to these features of EU law, the effect of the EAEU law within the national legal orders of Member States is unclear. The EAEU Treaty does not specify the relation of legal force between the Union acts and national legislation. EAEU Member States have various provisions on this issue in their respective national laws. In case of the EU, it is true, for instance, that certain EU Member States do not recognize supremacy of EU law over its constitutions, or, more precisely, certain constitutional norms.³⁴ However, this is not so for all other acts. Moreover, as mentioned above, before joining the EU, a number of countries, where needed, have changed the provisions of their constitutions in this respect. No constitutional changes took place in the EAEU Member States, even though not all national legal orders can accommodate the new features of the EAEU.

First of all, it is necessary to clarify the effect of the EAEU Treaty itself. It is observed in the literature, that Russia has adopted the strictest available option of the supremacy of the rules of international law.³⁵ According to Russian Constitution,³⁶ international agreements form part of its legal system and possess supremacy over national rules (Art.15(4) Russian Constitution). The only exception is the constitution itself, as “... international treaties of the Russian Federation, which do not correspond to the Constitution of the Russian Federation, shall not be implemented or used.” (Art.125(6) Russian Constitution). The Supreme Court of the Russian Federation has explained that national courts in deciding a case 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.³⁷ Therefore, the EAEU Treaty is part of Russian national law and has priority over other legislation.

Similar provisions are part of the Constitution of Armenia³⁸, where international agreements are a constituent part of the legal system and if a ratified international agreement stipulates norms other than those in the legislation, the norms of the agreement shall prevail. International agreements not complying with the Constitution cannot be ratified (para 4, Art.6 Armenian Constitution).

³⁴ See Craig and de Búrca, *op.cit.* note 28, 268-296.

³⁵ Alexei S. Ispolinov, “Status mezhdunarodnykh dogovorov v natsionalnom prave”, *Rossiiskii iuridicheskii zhurnal* (2014) No.1, 189-191, at 191.

³⁶ Constitution of the Russian Federation 1993, English version available at <https://www.constituteproject.org/constitution/Russia_2014?lang=en>.

³⁷ Postanovlenie Plenuma Verkhovnogo Suda Rossiiskoi Federatsii “O nekotorykh voprosakh primeneniia sudami Kostitutsii Rossiiskoi Federatsii pri osushchestvlenii pravosudiiia” (31 October 1995) No.8, point 5, available at <http://www.supcourt.ru/vscourt_detale.php?id=938>.

³⁸ The Constitution of the Republic of Armenia 1995, English version available at <https://www.constituteproject.org/constitution/Armenia_2005?lang=en>.

According to the Constitution of the Republic of Kazakhstan,³⁹ ratified international treaties have priority over national laws and are directly applicable except when the application of an international treaty requires the promulgation of a law. Such norms become part of domestic law (Art.4(1) and 4(3) Kazakhstani Constitution).⁴⁰ Consequently, in the same vein the EAEU Treaty is also part of the national law of Kazakhstan. Moreover, the Constitutional Council of the Republic of Kazakhstan is consistent in maintaining the priority of ratified international treaties over national laws.⁴¹

The Constitution of Kyrgyzstan stipulates that “international treaties to which the Kyrgyz Republic is a party that have entered into force ... and also the universally recognized principles and norms of international law shall be the constituent part of the legal system of the Kyrgyz Republic” (Art.6(3) Kyrgyzstani Constitution).⁴² The same provision is stipulated in the Law “On International Treaties of the Kyrgyz Republic”.⁴³ However, it seems that only international treaties on human rights are given direct effect and they also take precedence over other international treaties (Art.6(3) Kyrgyzstani Constitution). At the same time, the hierarchy of legal acts established by the Law “On normative legal acts of the Kyrgyz Republic” does not list international treaties among them.⁴⁴

The Constitution of the Republic of Belarus⁴⁵ is strikingly different from those of all other Member States. It does not have provisions on international agreements and only stipulates that the state shall recognize the supremacy of the universally acknowledged principles of international law and ensure that its laws comply with such principles (Art.8(1) Constitution of Belarus). The status of international agreements is not clearly defined in other national legislative acts either, and it depends on the status of legal acts, by which such agreements are adopted as binding. According to the Law on International Agreements,⁴⁶ legal norms of international agreements concluded by Belarus form part of national legislation and are subject to direct applicability, apart from cases when it follows from the agreement itself, that a national legal act should be adopted. In this case,

³⁹ The Constitution of the Republic of Kazakhstan 1995, English version available at <https://www.constituteproject.org/constitution/Kazakhstan_1998?lang=en>.

⁴⁰ The legal force of agreements that do not require ratification is not clear from the constitution and other legal acts.

⁴¹ V.A. Malinovskii, “Verkhovenstvo Konstitutsii Respubliki Kazakhstan v sfere mezhdunarodnykh otnoshenii”, *Konstitutsionnoe i munitsipalnoe pravo* (2014), No.1, 73-79, at 75.

⁴² The Constitution of the Republic of Kyrgyzstan 2010, English version available at <https://www.constituteproject.org/constitution/Kyrgyz_Republic_2010?lang=en>.

⁴³ Zakon Kyrgyzskoi Respubliki “O mezhdunarodnykh dogovorakh Kyrgyzskoi Respubliki” (24 April 2014) No.64, *Gazeta “Erkin-Too”* 09.05.2014, No. 35.

⁴⁴ Zakon Kyrgyzskoi Respubliki “O normativnykh pravovykh aktakh Kyrgyzskoi Respubliki” (20 July 2009) No.241, *Gazeta “Erkin-Too”* 07.08.2009, No.68-69.

⁴⁵ The Constitution of the Republic of Belarus 1994 (rev. 2004), English version available at <https://www.constituteproject.org/constitution/Belarus_2004?lang=en>.

⁴⁶ Zakon Respubliki Belarus’ “O mezhdunarodnykh dogovorakh Respubliki Belarus” (23 July 2008) No.4213, *Natsionalnyi reestr pravovykh aktov Respubliki Belarus’* (4 August 2008) No.184, 2/1518.

international agreements have the force of the act by which Belarus has agreed to the obligation (Art.33(2) of the Law). Therefore, according to these rules, the EAEU Treaty, which was ratified by a national law, could in principle become lower in status than a future new act of national legislation. There is nothing to prevent the rule *lex posterior derogat anterior* discussed above.

As for the legal acts of international organizations and their bodies, and more specifically decisions of the Commission which are directly applicable under the EAEU Treaty, there are significantly fewer provisions available in national law. The Constitution of Kazakhstan is probably the only exception: "... international treaty *and other commitments* of the Republic ... shall be the functioning law in the Republic of Kazakhstan" (Art.4(1) Kazakhstani Constitution, emphasis added). The Constitutional Council of the Republic of Kazakhstan has ruled that the obligations of Kazakhstan stemming from the decisions of the Commission of the Customs Union (now the EAEU Commission) fall under the category of "other commitments" under the Constitution.⁴⁷

The Constitutional Court of the Russian Federation has delivered a ruling that it has jurisdiction to rule on the constitutionality of decisions of the Commission, based on human rights concerns and foundations of constitutional order.⁴⁸ The legal force of decisions of international organizations in the Belarusian legal system can be deduced from the competence of the Constitutional Court to deliver opinions on the conformity of acts of international institutions to the Constitution, international agreements ratified by Belarus, and laws and decrees of the President (Art.116(4) Constitution of Belarus). Therefore, the acts of international institutions are hierarchically lower than these. Previously, it even followed from Article 9 of the Law on the Constitutional Court,⁴⁹ that acts of international institutions (including international agreements of Belarus) could be unilaterally found inapplicable by the Constitutional Court. However, the new Law on Constitutional Legal Procedure⁵⁰ no longer has this provision and provides that when an international obligation or the act of an international entity contradicts certain legal acts, the relevant state authorities take measures to terminate the participation of Belarus in such an international agreement or to terminate the obligatory nature of such an act, or introduce changes therein (paras 7 and 8 of Art.85 of the Law). Arguably, these new provisions are aimed at

⁴⁷ Normativnoe postanovlenie Konstitutsionnogo Soveta Respubliki Kazakhstan "Ob ofitsialnom tolkovanii norm stat'i 4 Konstitutsii Respubliki Kazakhstan primenitel'no k poriadku ispolneniia reshenii mezhdunarodnykh organizatsii i ikh organov" (5 November 2009) No.6, point 4, available at <<http://www.ksrk.gov.kz/rus/resheniya/?cid=11&rid=533>>.

⁴⁸ Opredelenie Konstitutsionnogo Suda Rossiiskoi Federatsii po zaprosu Arbitrazhnogo suda Tsentral'nogo okruga o proverke konstitutsionnosti punkta 4 Poriadka primeneniia osvobozhdeniia ot uplaty tamozhennykh poshlin pri vvoze otdelnykh kategorii tovarov na edinuiu tamozhennuiu territoriiu Tamozhennogo soiuza, (3 March 2015), available at <<http://doc.ksrf.ru/decision/KSRFDecision190708.pdf>>.

⁴⁹ Zakon Respubliki Belarus' "O Kostitutsionnom Sude Respubliki Belarus'" (30 March 1994) No.2914-XII, *Viedamašci Viarchoŭnaha Savieta Respubliki Bielaruš* (1994) No.15, p. 220.

⁵⁰ Zakon Respubliki Belarus' "O konstitutsionnom sudoproizvodstve" (8 January 2014) No.124-Z, *Natsionalnyi pravovoi Internet-portal Respubliki Belarus'*, 16.01.2014, 2/2122.

ameliorating the constitutional rules mentioned above with a view to taking a more favorable stance towards Belarus' participation in the EAEU. However, these changes fall short of changing the dependency direction—according to domestic law, the decisions of EAEU institutions remain dependent on national legislation.

This analysis shows that not all Member States' legal orders are necessarily compatible with the EAEU framework. However, this is mainly relevant for the full effect of Union law, while it is not necessarily relevant for the autonomy of Union law.⁵¹ Therefore, in order to ensure its effectiveness, either national constitutional norms have to be changed or the EAEU Treaty amended or the EAEU Court should come up with EU-like doctrines to effectuate Union law in the national legal orders of Member States in order to preserve the legal order of the EAEU. The latter option, being in principle devoid of the political conundrum inherent to the former ones, is however, no less challenging as will be seen below. We now turn to the discussion of the ability of the EAEU Court to ensure the functioning of the EAEU legal order.

The EAEU Court as the guardian of the EAEU legal order?

The EAEU Court's aim is to ensure the uniform application of the law of the Union by EAEU Member States and institutions (para 2 Statute of the Court). In order to ensure this ambitious task, the Statute of the Court provides a number of procedures and tools. Upon request of the Member States or economic entities, the Court can adjudicate on the issues raised about implementation of the law of the Union. Member States can also raise issues of the compliance of international agreements within the Union with the EAEU Treaty; the compliance of other Member States with the law of the Union; the compliance of the decisions of the Commission with the law of the Union; and challenge an action (inaction) of the Commission (para 39 Statute of the Court). Economic actors, including foreign ones, can raise issues of compliance of the Commission decision directly affecting their rights in the economic field, with the Treaty and (or) international agreements within the Union. The same is possible with regard to the action (inaction) of the Commission.

These types of proceedings, which can be classified as infringements, actions for annulment and failure to act, are also shared by the EU. However, arguably the most important type of proceedings is not found among them: the preliminary ruling. Since the *Van Gend en Loos* judgment of the ECJ, it is precisely the preliminary ruling procedure which has become one of the most important features of the autonomy of EU legal order. The idea behind the EU preliminary ruling procedure is similar to the one the EAEU Court is assigned to ensure with regard to EAEU

⁵¹ On the relation of national law and autonomy see Barents, *op.cit.* note 8, 265-270.

law: to preserve the uniform interpretation of EU law and the effective functioning of the legal order itself. However, it also goes beyond that purpose in order to protect individual rights given that the EU is “based on the rule of law” and that its founding Treaty establishes “a complete system of legal remedies”.⁵² Through this procedure, the national courts of EU Member States and the Court of Justice of the EU (CJEU) are integrated into one system of judicial supervision. The supremacy and direct applicability of EU law enables any natural or legal person to challenge actions of their own Member States against EU law, also when there are limits of direct access of individuals to the CJEU. This is in stark contrast to the EAEU, where, apart from Member States, only “economic entities” have direct access to the EAEU Court (para 39 Statute of the Court), and no preliminary ruling procedure is available. By contrast, the preliminary ruling, however limited, was available in the EURASEC, even though it was used only once.⁵³

The ECJ and the national courts of EU Member States use this proceeding widely.⁵⁴ Attempts of Member States to pick and choose which EU law to apply have been often challenged in their own national courts. The fact that the national court makes the final decision is of crucial importance for the procedure. The obligatory effect of such a judgment and its enforcement gains additional weight, when it is delivered by one’s own national court. Through the means of this procedure, individuals become, to a certain extent, agents monitoring Member States’ compliance with EU legal obligations.⁵⁵

Another important feature of judicial control in the EU is the ability of the European Commission to file an action against a Member State violating its obligations under EU Treaties (Art.258 TFEU). The role of the European Commission is crucial, especially when it is compared to other international organizations. Typically, in international public law, such issues are settled between the contracting parties themselves.⁵⁶ It is an important instrument to preserve the uniform application of EU law, especially with the European Commission taking an even stronger pro-active

⁵² See Case 294/83 *Les Verts* [1986] ECR 1339; Case C-50/00 P *Unión de Pequeños Agricultores v Council* [2002] ECR I-6677; Case C-263/02 P *Commission v Jégo-Quéré* [2004] ECR I-3425. See also Alberto Alemanno, “What Has Been, and What Could Be, Thirty Years after *Les Verts/European Parliament*”, in Miguel Maduro and Loïc Azoulai (eds.), *The Past and Future of EU Law: The Classics of EU Law Revisited on the 50th Anniversary of the Rome Treaty* (Hart Publishing, Oxford, 2010), 324-332.

⁵³ Reshenie Bolshoi kollegii Suda EvrAzES (10 July 2013), *Biulleten’ Suda Evraziiskogo ekonomicheskogo soobshchestva* (2013) No.2, 7-17. For analysis, see Alexei S. Ispolinov, “An imposed monologue; the first preliminary ruling of the Court of the Eurasian Economic Community”, 63(8) *EvrAziiskii juridicheskii zhurnal*, (2013), 21-30. Interestingly enough, the court that referred for the preliminary ruling—Supreme Economic Court of Belarus—almost immediately withdrew the request. The EURASEC Court decided to open the proceedings nevertheless, as it had a right to do so. The new EAEU Court does not have such a right anymore under the new Statute.

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* (Publications Office of the European Union, Luxembourg, 2015), 113-114. Altogether 8710 references for a preliminary ruling, which is almost equal to all direct actions (8901).

⁵⁵ Weiler, *op.cit.* note 26, 2419.

⁵⁶ A.C. Evans, “The Enforcement Procedure of Article 169 EEC: Commission Discretion”, 4 *European Law Review* (1979), 443.

role over time.⁵⁷ Moreover, it has been found that Member States tend to comply with the decisions of the ECJ.⁵⁸

There is no such procedure in the EAEU, where only Member States can file actions against other Member States for non-compliance. The Commission is deprived of such a function, which was, however limited, available before. This is a clear rollback in supranationality and is definitely a weak point in the judicial control and effective functioning of the legal order; even more so as EU practice shows that Member States rarely file actions against each other out of fear of retaliation and prefer a political resolution of differences.⁵⁹

There are other limitations to the EAEU Court. There is a provision, according to which the Court does not have power to create competences for EAEU institutions in addition to those explicitly provided in the treaties (para 42 Statute of the Court). Arguably, the purpose of this rule is to limit the ability of the Court to find the implied powers of the organization, to a large extent the way the CJEU did in case of the EU,⁶⁰ and International Court of Justice—in case of the United Nations.⁶¹

Another limiting provision is that the Court's decisions do not change and (or) invalidate the norms of EAEU law and national law which are in force and the Court does not create new ones (para 102 Statute of the Court). Neither of the provisions existed in the EAEU Court's predecessor the EURASEC Court. There could be at least three factors which played a role in introducing the provision. First, borrowing from the CJEU, the previous EURASEC Court took an activist attitude from the very start.⁶² Such was the position taken by the court that the Russian international law specialist Ispolinov classified it a “new-style institution of international justice”.⁶³ He claims that

⁵⁷ E.g. using new instruments like Solvit (<ec.europa.eu/solvit/index_en.htm>), running the EU Pilot

(<http://ec.europa.eu/internal_market/scoreboard/performance_by_governance_tool/eu_pilot/index_en.htm>), and other initiatives.

⁵⁸ See Alec Stone Sweet and Thomas Brunnel, “The European Court of Justice, State Noncompliance, and the Politics of Override”, 106(1) *American Political Science Review* (2012), 204-213.

⁵⁹ Craig and de Búrca, *op.cit.* note 28, 433.

⁶⁰ See e.g. the following cases: Case C-8/55 *Fédération Charbonnière de Belgique v High Authority*, Judgment of the Court, (16 July 1956), ECR 245; Case 20-59, *Italy v High Authority*, Judgment of the Court, (15 July 1960), ECR 325; Case 25-59, *Netherlands v High Authority*, Judgment of the Court, (15 July 1960), ECR 355; Case 31-59, *Acciaieria e Tubificio di Brescia v High Authority*, Judgment of the Court, (4 April 1960), ECR 71; Case C-22/70, *Commission v Council (ERTA)*, Judgment of the Court (31 March 1971), ECR 263; Joined Cases 3, 4, and 6/76, *Kramer*, Judgment of the Court (14 July 1976), ECR 1279; Opinion 1/76 *Laying-up Fund for Inland Waterway Vessels*, Opinion of the Court, (26 April 1977), ECR 741; Opinion 1/78, *International Agreement on Natural Rubber*, Opinion of the Court, (4 October 1979), ECR 2871; Opinion 1/76 *Laying-up Fund for Inland Waterway Vessels*, Opinion of the Court, (26 April 1977), ECR 741; Opinion 2/91, *ILO*, Opinion of the Court, (19 March 1993), ECR 1061. See also Magdalena M. Martin Martinez, *National Sovereignty and International Organizations* (Kluwer Law International, The Hague, 1996); Viljam Engström, *Constructing the Powers of International Institutions* (Martinus Nijhoff, Leiden, 2012).

⁶¹ See the following case-law: *Reparation of Injuries*, *op.cit.* note 16, 174; *Effect of Awards of Compensation Made by the United Nations Administrative Tribunal*, *Advisory Opinion*, *I.C.J. Reports 1954*, p. 47; *Certain Expenses of the United Nations (Article 17, Paragraph 2, of the Charter)*, *Advisory Opinion*, *I.C.J. Reports 1962*, p. 151. See also Jan Klabbers, *An Introduction to International Institutional Law* (Cambridge University Press, Cambridge, 2009); Engström, *op.cit.* note 60.

⁶² About “judicial activism” of the Court of Justice, see Mark Dawson, Bruno De Witte and Elise Muir, *Judicial Activism at the European Court of Justice* (Edward Elgar Publishing, Cheltenham, 2013).

⁶³ Alexei S. 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* (2013), 225-246, at 225.

one of its very first judgments—*Iuzhnii Kuzbass*⁶⁴—has become the first judicial activism case in the post-Soviet space.⁶⁵ Treaty interpretation was much more extensive than the textual provisions. In particular, while the relevant EURASEC legal acts did not explicitly provide the EURASEC Court with powers to declare Commission’s decisions void, the Court found it 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 omnes*. Second, when the issue of the competence of international judicial institutions, among others, was reviewed by the Economic Court of the Commonwealth of Independent States, this court decided, that the competence of judicial bodies, created in the framework of integration entities is limited by the aims of a specific integration entity.⁶⁶ This interpretation of competence is wide as it could be seen as allowing the courts to go beyond the competence explicitly provided to them in the relevant treaties, essentially moving the narrow limit of the explicitly attributed powers to a wider limit of aims. This logic in the hands of judges of the EURASEC Court could have been perceived as a threat to Member States. Third, at least one judge of the EURASEC Court explicitly took the position that the Court is able to create new legal rules.⁶⁷ All of this could, in principle, lead to the claiming of wide powers of judicial review and the exercise of judicial activism.

There is no provision similar to the EU’s exclusive jurisdiction (Art.344 TFEU) and jurisprudence.⁶⁸ Moreover, it is stipulated that the Court’s interpretation of the EAEU Treaty on request of the Member States or institutions is consultative and does not deny the right of Member States’ joint interpretation (point 47 Statute of the Court).

The Court lacks powers to issue penalties. Moreover, if a judgment is not implemented, the issue is transferred to the Supreme Council (para 114 Statute of the Court), where decisions are taken unanimously, meaning that all Member States are voting, including the defendant, as there is no provision to prevent them from it.

Finally, as mentioned earlier, the Member States (as well as the Court and the judges) can initiate the termination of the duties of a judge upon certain conditions (para 13 Statute of the Court). This may interfere with the independence of the judges and, therefore, undermines the supranationality of the EAEU Court. This is not possible in the CJEU, where the judges can only be

⁶⁴ Postanovlenie Bol’shoi kollegii Suda EvrAzES (8 April 2013), *Biulleten’ Suda Evraziiskogo ekonomicheskogo soobshchestva* (2013) No.1, 47-52.

⁶⁵ Alexei S. Ispolinov, “Reshenie Bol’shoi Kollegii Suda EvrAzES po delu Iuzhnogo Kuzbassa: naskol’ko obosnovan sudeiskii aktivizm?” 60(5) *EvrAziiskii iuridicheskii zhurnal* (2013), 19-26, at 22.

⁶⁶ “Konsultativnoe zakliuchenie Ekonomicheskogo Suda SNG No.C-1/19-96 (15 May 1997) po voprosu, v kakie konkretno mezhdunarodnye sudebnye organy mogut obrashchat’sia gosudarstva-uchastniki Sodruzhestva Niezavisimyykh Gosudarstv”, in *Resheniia Ekonomicheskogo Suda Sodruzhestva Niezavisimyykh Gosudarstv, 1992-2006* (Kovcheg, Minsk, 2007), 167-172.

⁶⁷ Tatiana N. Neshataeva, “K voprosu o sozdanii Evraziiskogo soiuza: integratsiia i nadnatsionalizm”, *Zakon* (2014) No.6, 106-119.

⁶⁸ See e.g. the following case-law: Opinion 1/91, *op.cit.* note 7; Case C-459/03, *op.cit.* note 7.

removed by a unanimous vote of the judges themselves (excluding the judge under consideration) and Advocates General (Art.6 CJEU Statute). In addition, unlike the CJEU, the EAEU Court allows for dissenting opinions, which makes public who the dissenters are. The EAEU Court system can therefore put pressure on the judges and compromise their independence.

These striking provisions and the differences with the CJEU lead to the conclusion that it will be a hard task for the EAEU Court to ensure uniform application of the law of the Union. The Constitutional Court of Russia has already voiced its differences in approaches with regard to the EAEU Court.⁶⁹ The latest ruling of the Constitutional Court, regarding the decisions of the European Court of Human Rights (ECtHR) is not helpful.⁷⁰ Even though exceptionally, in case it is the only option to prevent the violation of the principles and norms of the Russian Constitution, Russia can set aside international obligations. Such cases can occur following certain interpretations by the ECtHR, in particular if they violate *jus cogens*. Leaving aside discussions of theoretical validity of this position, these are, in any event, extreme, and therefore rare cases. Arguably, the main problem, nevertheless, is the uniform understanding and application of the law of the Union by lower national courts, and ensuring Member States to uphold their obligations on an everyday basis.

Conclusion

An analysis of the EAEU shows that the new organization is an interesting development in the post-Soviet space which requires further research, especially when more practical implementation becomes available, on both the EAEU and national level. In principle, there are a number of features of the new legal order which could promote further integration in the post-Soviet area. The EAEU has the power to adopt decisions binding upon Member States; certain institutions that adopt such decisions are not fully dependent on the cooperation of all Member States; there is direct applicability for at least one type of legal act; and the EAEU has certain power to enforce its decisions.

It is, however, clear that there are multiple gaps, which shows how the new legal order lags behind the autonomy of the EU legal order. Even the claimed supranational features that the EAEU possesses are quite limited. For instance, the binding nature of the decisions of the EAEU Commission and their direct applicability stumbles upon different national legal systems, making it possible for Member States to “circumvent” this binding character. The institutions are largely

⁶⁹ See *Opredelenie Konstitutsionnogo Suda Rossiiskoi Federatsii No.417-O* (3 March 2015), available at <<http://doc.ksrf.ru/decision/KSRFDecision190708.pdf>>.

⁷⁰ *Postanovlenie Konstitutsionnogo Suda Rossiiskoi Federatsii 21-P* (14 July 2015), available at <<http://doc.ksrf.ru/decision/KSRFDecision201896.pdf>>.

dependent on the cooperation of all Member States, as decisions can be overturned because of the “Belarusian elevator” decision-making system. This leads to the conclusion that the EAEU remains largely an intergovernmental organization.

One of the major differences between the development of the institutional structures of the EU and the EAEU is that in the former there appears to be a balance between the supranational and intergovernmental bodies. Eurasian integration took another path, creating a vertical institutional structure; with the EAEU, this vertical dependence has been reduced, but not eliminated.

The EAEU Court will struggle to enforce its jurisdiction as the institution powers have become less far-reaching than its predecessor’s (the EURASEC Court). There are fewer types of proceedings it is capable to adjudicate. The drafters of the EAEU Treaty were also careful to limit the scope for CJEU-like judicial activism. From this it can be concluded that only with difficulty will the EAEU Court be able to achieve its main aim as provided in the Treaty, and to ensure the autonomy of the legal order.

It is clear that the institutional system set out in the EAEU Treaty is there to preserve the interests of all Member States. However, some innovative legal features coupled with the enthusiasm of the judges of the preceding court, who remained in the job in the EAEU Court, can play an integrative role in practice and potentially develop a viable autonomous legal order. Therefore, the implementation of the EAEU Treaty and the acts derived from it, together with their enforcement, will show the real value of the ongoing integration process.

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