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EURASIAN ECONOMIC UNION LAW: APPROACHES TO CONCEPTUAL UNDERSTANDING

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The beginning of the legal framework of integration EAEU founding members can be regarded in 1991 the formation of the Commonwealth of Independent States (CIS) – association that is very soft in legal essence (according to the opinions of some researchers, «at the initial period of CIS creation of and activities integration aspirations were declared more than fulfilled in reality» [1; 94]), but wider in scope of participants.

In 2000 a number of member states of the CIS (Russia, Belarus, Kazakhstan, Kyrgyzstan, Tajikistan) established the «second floor» of post-Soviet integration – the Eurasian Economic Community (hereinafter - EurAsEC). It was more effective: in its framework nearly 200 international treaties were adopted; States participants were able to unify the domestic legal systems in part of trade and the economy in general. At the same time there was a definite imbalance in their rights and obligations: some states have not ratified certain treaties, haven't satisfied them [2; 127].

The problem was in the method of making and implementing decisions, so Russia, Belarus and Kazakhstan as the states more prepared decided to change the method - to transfer some part of the competences to the supranational level. In 2010, the Customs Union of three countries has been established, and as its main body - the Commission of the Customs Union with supranational powers was. Later, the Customs Union was amended by draft of the Common Economic Space; Eurasian Economic Commission was established instead of the Customs Union Commission (hereinafter – EEC).

In 2014, three countries signed the Treaty establishing the Eurasian Economic Union - the next «level» of integration. EurAsEC, which has performed its task, has been abolished. An optimization of the integration of the control system by means of international legal instruments, «multiplicity» of integration structures was eliminated, which are drawn to the attention of experts [3].

For a more complete understanding of the concept of the «EAEU law», which is formulated in Article 6 of the EAEU Founding agreement should apply to the formation of its origins and evolution within the Customs Union and Common Economic Space, which were the forerunners of the Union.

The foundations of the Customs Union between Belarus, Republic of Kazakhstan and the Russian Federation have been formulated January 6, 1995, when the Heads of this States signed in Minsk Agreement on the Customs Union between the Russian Federation and Belarus, and on January 20 of the same year Kazakhstan acceded to this Agreement. In 1996 the Kyrgyz Republic joined to this agreement, and in 1999 – Republic of Tadzhikistan.

In the future, the legal framework of the Customs Union has been supplemented by such agreements as the Treaty on the deepening of integration in economic and humanitarian spheres (1996), the Treaty on the Customs Union and the Common Economic Space (1999) and a number of others.

October 10, 2000 the Agreement on the Establishment of the Eurasian Economic Community (EurAsEC) was signed in Astana, an international organization, which has put in Article 2 the own aim the

effective promotion of the formation process by its member states of the Customs Union and Common Economic Space, as well as other goals and tasks defined in the previously mentioned agreements on the Customs Union, the Treaty on the deepening of integration in economic and humanitarian spheres, and the Treaty on the Customs Union and Common economic space, according to the chalked out steps identified in the above documents [4].

Treaty establishing a single customs territory of the Customs Union on October 6, 2007 was the founding (basic) international legal instrument establishing a framework for cooperation among States Parties (Russian Federation, Belarus and Republic of Kazakhstan) in the formation process of the customs union. On the same day the Agreement on the Customs Union Commission was signed, which was established by a single permanent regulatory body of the Customs Union.

December 9, 2010. three CU member states signed 17 documents on the creation of the Eurasian Economic Space (hereinafter – EES), among which the Action Plan for 2010-2011 on the formation of the Eurasian Economic Space of three states, which includes the development and signing during two years, to January 1, 2012, twenty international agreements, ensuring the creation of the EES was. The whole package of documents forming the EES, ratified by the parties and entered into force for the States Parties to January 1, 2012. Finally, November 18, 2011 three CU Member States signed the Treaty on the Eurasian Economic Commission (hereinafter - EEC), which replaced the CU Commission. EEC was established as a single permanent regulatory body of the CU and EES.

At the same day, presidents of the CU and the EES member states signed a document that opens the next stage of integration. We are talking about the Declaration of the Eurasian economic integration, which expresses the transition from 1 January 2012 to the next stage of the integration building – EES, based on the norms and principles of the World Trade Organization (WTO) and open at any stage of its formation for accession by other States. The final goal of this stage – the creation in 2015 of the Eurasian Economic Union (EAEU), has been successfully implemented.

Within the framework of the Customs Union of Russia, Republic of Belarus and Republic of Kazakhstan (CU) was formulated the concept of the legal base of the Customs Union, that is complex of international agreements concluded between States Parties, the implementation of which creates the Customs Union.

In CU practice, all international treaties constituting the contract legal base, were divided into three groups:

- a) international treaties acting in the framework of the Eurasian Economic Community (altogether 13 international agreements);
- b) international agreements, aimed at completing the formation of the contract legal base of the Customs Union (38 international agreements);
- c) other international treaties (42 international agreements).

This classification is based on the provisions of the Protocol on the procedure of entry into force of international treaties aimed at the formation of the contract legal base of the Customs Union, out of them and joining them taken October 6, 2007.

After the establishment of the Eurasian Economic Space in the decision of the board of the Eurasian Economic Commission on April 12, 2012 were specified the basic parameters of the contract legal framework of the CU and EES. In that decision the EEC departments responsible for monitoring realization process of the agreements forming the legal base of the Customs Union and Eurasian Economic Space were listed.

The document specified for four groups of agreements:

- a) international agreements aimed at the completion of the formation of the contract legal base of the Customs Union (29 international agreements);
- b) list of international agreements provided for the Action Plan for the introduction of the Customs Code of the Customs Union (16 international agreements);
- c) other international agreements of the Customs Union (23 international agreements);
- d) international treaties on the formation of the Eurasian Economic Space (17 agreements).

Unlike the list drawn up by the CU, from consideration international agreements acting in the EurAsEC were excluded [5; 52].

Article 6 of the Founders Agreement describes the EAEU law, which allows making the conclusion that the authors have overcome the narrowness of the concept of «the contract legal framework» of integration. It is established that the right of the Union consists of as international treaties: Founders Agreement of the Union, international agreements in the framework of the Union, the International contracts of the Union with third party, as well as acts of secondary order, namely the international legal acts adopted by EAEU bodies.

These include: the decisions and orders of the Supreme Eurasian Economic Council, the Eurasian Intergovernmental Council and the Eurasian Economic Commission, adopted within the framework of their powers stipulated by the Founders Agreement and international treaties within Union frameworks [3].

Outside the Article 6 of the Treaty establishing the EAEU some international legal instruments and norms of international law were still, which, apparently, will play a role in the legal regulation of the integration process and take its place in the legal system of the EAEU. First of all, we are talking about judicial acts taken by the Court of the Eurasian Economic Union. According to Chapter VII of the Statute of the Court it is as a result of the dispute shall decide, and at the request of explanation – provides advisory opinion.

It should be emphasized that the Statute of the Court quite carefully formulated legal nature and value of judgments. Thus, according to p.98 of the Statute of the advisory opinion at the request of clarification has recommendation character. In turn, the Court's judgments will be binding on the parties to the dispute or by the EAEU Commission (p.99-100). In this case, the Court's judgment could not go beyond specified in the statement of issues (claim 101). In addition, the Court's judgment does not change and (or) does not change the existing rules of Union law, the legislation of the Member States and does not create new (p. 102) [6].

Finally, the concept of the legal system (or law) EAEU will inevitably include the norms of «soft law», adopted by EAEU bodies and Member States, which will also affect the international legal regulation of the Eurasian economic integration.

Determination of the normative legal base regulating customs relations in the EAEU Customs Union is the one of the basic questions, the answer to which depends on the methodology of solving other facing customs law problems. The study of the Supreme Eurasian Economic Council, the legal status showed that the legal regulation of the main body of the Common Economic Space is not without flaws; violating one of the principles law established activity – the principle of systematic.

Only a few studies are devoted to the legal regulation in the EAEU. This is probably one of the reasons that the customs relations between the EAEU Member States «number of exceptions and limitations have not diminished, and in some areas even increased». Study summarizing and systematizing knowledge about the sources of legal regulation in the framework of the EAEU, are of particular relevance in relation to the intensity of the legislative process [7; 111].

Recall that from January 1, 2018 the Treaty on the Customs Code of the Eurasian Economic Union (hereinafter – EAEU CC), adopted April 11, 2017 in Moscow came into force. Simultaneously with the entry into force of the Treaty on the Customs Code of the Eurasian Economic Union on April 11, 2017 the Agreement on the Customs Code of the Customs Union on 27 November 2009 ceased to operate, as well as a number of international agreements, which were subject to the customs legal and signed at the stage of the Customs Union (Annex 2 and Annex 3 to the Treaty of EAEU CC).

In the study of the legal regulation of sources it is important to organize them and define the limits of the normative legal acts on each of the regulatory levels (international, national or supranational). However, despite ongoing researches, features of the legal framework regulating specific relations remain unexplored. In particular, international legal base of regulation of custom-tariff relations has not been investigated customs tariff of relations, which were a key in the formation of the EAEU.

Since the beginning of the XX century international customs and treaties concern to the sources of international law. Sources of international law are characterized as «official-legal form of the existence of international law norms ... and represent the external form in which the normative content of the rules embodied» [8; 387].

All sources of international law are combined by the concept of international legal framework. There is a classification, according to which all sources of international law are divided into major (international treaty, international customs and general principles of law) and additional (regulations, decisions of international institutions and bodies).

Creating of the EAEU led to arising of new classifications of sources of international law in the EAEU: legal and doctrinal.

Legally in the EAEU customs legislation there are three groups of legal acts:

- The EAEU Customs Code;
- International treaties of the Member States of the EAEU regulating customs relations in the EAEU;
- The decisions of the Eurasian Economic Commission, including the decision of the Commission of the Customs Union (abolished with the transfer of the powers of the Eurasian Economic Commission).

Doctrinal classification is wider than legal classification, which indicates that the number of normative legal acts regulating customs relations, more than the number of normative legal acts constituting the customs legislation of the EAEU.

Allocation of a special group of legal acts – Customs legislation of the EAEU – solves several problems. Firstly, in addition to Art. 1 of the Treaty «On the Customs Code of the Customs Union» establishes a hierarchy of legal acts, which are taken in the framework of the EAEU [9]. Secondly, it makes a distinction between the laws of the Member States of the EAEU and the other normative legal acts adopted in the framework of the EAEU and components EAEU customs legislation. However, the introduction of the term «customs legislation of the Customs Union» led to the fact that the definition of international legal sources that regulate customs relations in the EAEU, is not a trivial task.

For example, why EAEU CC doesn't mention international treaties which Member States EAEC concluded with states which are not members EAEU? These contracts are not included in the customs legislation of the EAEU and, as rightly A.N. Kozyrin observes, «they will be used as the international legal sources of national customs law» [10; 65]. Exclusion of international agreements concluded by the EAEU Member State with non-members of the EAEU, of the customs legislation of the EAEU is fundamentally different from the approach used in the definition of the customs legislation of the Customs Code of the European Union.

In accordance with Art. 4 p. 2 of the new Customs Code of the European Union (Union Customs Code), which entered into force on 1 May 2016, the customs legislation includes not only the Code and adopted in accordance with it the positions, but also the Common Customs Tariff, legislation establishing a Community system of exemption from customs duties but also international agreements containing provisions on customs matters, to the extent that they are applicable in the European customs Union.

Commitments made by one of the CU Member States within the framework of international agreements concluded between the Member State of CU and non-CU member states, may be contrary to the interests of other CU Member States and the EAEU in general and deal with the legal regulation of relations associated with the movement of goods across the customs border of the EAEU. Realizing the potential risks, but taking into account the importance of the conclusion of certain international agreements, the obligations which may interfere with the consensus reached within the framework of the EAEU, the CU Member States have concluded the Treaty on the functioning of the Customs Union within the framework of the multilateral trading system (signed in Minsk on May 19, 2011). At that time, an agreement was signed by Russia, Kazakhstan and Belarus.

In accordance with this Treaty, EAEU Member States committed themselves to co-ordinate the conditions of accession to the World Trade Organization (hereinafter – the WTO) and to comply with the commitments made by States members of the EAEU accession to the WTO. However, even the existence of the Treaty cannot guarantee to reach a compromise. For example, the WTO can deliver to the Republic of Belarus the condition of a significant reduction in import duties on cars. For the economy of the Republic of Belarus the implementation of such conditions has no significant risk, at the same time the interests of the Russian Federation can be observed only at high rates of import customs duties on cars.

In what way and at what price compromise in this and other similar situations will reach, it is impossible to predict. It is possible that one of the ways could be the development of national regulations, restricting the movement of goods within the EAEU. For example, the Russian Federation Government is considering question about development of regulations, «providing the establishment of restrictions on the import by persons on the territory of Russia in Kazakhstan and Belarus alcoholic products».

At the same time, in accordance with sub-paragraph 1 of Art.3 of the Treaty establishing a single customs territory and formation of the Customs Union (signed in Dushanbe on October 6, 2007) since the establishment of a single customs territory the EAEU Member States shall not apply customs duties, quantitative restrictions and equivalent measures in mutual trade, although it is not excluded various measures aimed at protecting the national interests of the EAEU Member States. The adoption of such normative legal acts by the EAEU Member States could be the beginning of the end of one of the most successful integration associations.

Thus, international treaties of the EAEU Member States with third countries to the extent that they are applicable to the regulation of customs and tariff relations in the EAEU, should be included in the international legal framework of customs and tariff regulation in the EAEU, and the process of signing such agreements should always pass the stage of coordination with the EAEU Member States.

There is no definite answer to the question of the legal nature of the decisions of the Eurasian Economic Commission in the regulatory legal acts. The researchers note that «the legal nature of the decisions of some intergovernmental bodies of integration associations are not defined, it is not always a positive effect on their implementation». A.A. Kashirkina and A.N. Morozov believe that the described problem concerns including the decisions of the Commission of the Customs Union and the Eurasian Economic Commission, which, in

their opinion, are not international treaties, but researchers do not answer what the legal nature of these solutions are supranational bodies.

The authors propose the construction, according to which «the decisions of the Eurasian Economic Commission are included into the «fabric» of the national legal order» through the Regulation on the Eurasian Economic Commission, in accordance with sub-paragraph 13 of Art. 1 of which «the Commission within its powers takes decisions with regulatory and binding for Member States, resolutions which have organizational and administrative character, and recommendations have no binding character. Decisions of the Commission are part of Union law and are directly applicable in the territories of Member States» [11; 250].

The proposed construction makes it possible to explain why the decision of the Eurasian Economic Commission have direct effect in the territory of the Member States of the EAEU, but did not give an answer to the question of the legal nature of the Eurasian economic Commission decisions.

If the decisions of the Eurasian Economic Commission are not an international treaty, on what basis they are part of the contractual and legal base of the EAEU? If the decisions of the Eurasian Economic Commission are not an international treaty, then what kind of normative legal act they are and whether or not the decisions should be seen as a new kind of normative legal act? If this is a new kind of normative legal act, it is necessary to highlight the characteristics that distinguish the decisions of the Eurasian Economic Commission on the other types of normative legal acts, such as trying to make to the technical regulations of interstate integration associations.

The dispute about the legal nature of the decisions of the Eurasian economic Commission has theoretical character until then; the question of enforcement will not arise. This could happen if, the decision of the Board of the Eurasian Economic Commission will be contrary to the interests of one of the Member States of the EAEU. In this case, the lack of consensus would lead the parties to the EAEU Court, and further development of events will depend on the legal nature of the decisions of the Eurasian Economic Commission.

All Member States of the EAEU acceded to the International Convention on the simplification and harmonization of customs procedures, the provisions of which set the legal minimum that should be provided in the regulation, including customs and tariff relations. For example, it was found that the legislation should determine the conditions of occurrence of the obligation to pay customs duties; it determined that the rates of customs duties shall be published in the official publications; the requirements for the establishment of a minimum value and a minimum amount of customs duties, below which customs duties shall not be charged, etc.

The international legal framework regulating customs and tariff relations includes the International Convention on the Harmonized Description and Coding System of the goods, which was joined by all the Member States of the EAEU. This Convention is in the basis of the Common Customs Tariff of the EAEU, approved by the Board of the Eurasian Economic Commission decision dated July 16, 2012 number 54 and is based on:

- Harmonized system of description and coding of goods;
- Combined Nomenclature of the European Union (for most products);
- United commodity nomenclature of foreign economic activity of the EAEU.

Priority of the EAEU customs legislation should be the basic principle of the emerging law of the Customs Union within the EAEU, which implements the provisions of p. 2 of Art. 1 of the CC of the EAEU, according to which the regulation of customs relations in accordance with the legislation of the Member States of the EAEU is carried out only before establishing the appropriate relations at the level of the customs legislation of the EAEU. Therefore, the role of the international legal framework for the regulation of customs, in particular customs tariff relationship will grow.

However, it should refrain from the forced transition from the regulation at the national level to the international and supranational as long as Member States of the EAEU will be the prevailing understanding of the legal structure of the system within the EAEU, until the problems will not be resolved with the hierarchy of normative legal acts on the legal force and their place in the national legal systems of the Member States of the EAEU.

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ДҮНИЕЖҮЗІ САУДА ҰЙЫМЫНЫҢ ҚЫЗМЕТІНІҢ НЕГІЗГІ БАҒЫТТАРЫ ЖӘНЕ ОНЫ ҚҰҚЫҚТЫҚ РЕТТЕУ

Мунайтбас Е.Н., Е.А.Бөкетов атындағы ҚарМУ-дың заң факультетінің 1-курс магистранты

«Уругвайлық раунд» көпжақты сауда келіссөздерінің ерекшелігі, ГАТТ-тың тарихында бірінші рет күн тәртібіне осы ұйымның қызметіне тікелей қатысы жоқ сұрақтың кіргізілуінде. Бұл бірінші кезекте қызметтерді сату (банктік, сақтандыру, транспорттық, құрылыс, компьютерлік), сонымен қатар интеллектуалды меншікті, садумен байланысты инвестицияны қорғау сұрақтары жатады. Одан басқа, раундтың күн тәртібіне әлемдік сауданы дамытудың қазіргі этапына ГАТТ-тың механизмінің адаптациясы және жаңашаландыруы сияқты сұрақтар енгізілді. Өзінің қызмет ету аясын кеңейте отырып ГАТТ әрекет етуші халықаралық сауда жүйесін гармонизациялайтын Дүниежүзі экономикалық ұйымға айналды [1, 305].

Қазіргі кезде әлемдік нарықта ғаламдану мен бәсекелестіктің күшеюінің тікелей талаптарына бүкіл әлем аймактануды нығайту арқылы жауап береді. Аймақтық интеграция экономикалық және саяси қиыншылықтарға төтеп берудің, мемлекеттер консолидациясының және әлемдік бәсекелестіктің шарттарына, сапаның әлемдік стандарттарына және әлемдік интеграцияға сатылап кірудің дайындықтары мен бейімделу әдістері болып табылады. Ғаламдану шеңберіндегі көпбағытты байланыстар НАФТА, Латын Америкасының Андтық елдері, Оңтүстік –Шығыс Азиядағы АСЕАН, құрылу сатысындағы ЕвразЭО трізді ұйымдарсыз мүмкін емес. Ғаламданудың әсерінен көптеген дамушы және транзитті елдерде әлеуметтік – экономикалық бағыттары ауысып, шаруашылық жүйелерінің қызметінде күрделі өзгерістер болып жатыр. Бұл сауда мен бағалар либерализациясы, кәсіпкерлік қызметтегі бостандық, мемлекеттің шаруашылық қызметінің қысқаруы, қатаң фискальды саясат.

Ұлттық шаруашылық кешендерінің бөлшектенуінің саяси және экономикалық нәтижелері, өтпелі елдер үшін неолибералды әлемдік экономикалық тәртіптің әсері сияқты түпкілікті мәселелер пайда болады. Соңғы кездегі өсімнің жоғарғы деңгейі Қазақстан нарығындабилік етіп отырған шетел инвесторларының арқасында қамтамасыз етіледі. Бұл жағдай республиканың резидент еместерге тәуелділігін ұлғайтып, мұнай, газ, тау кен компанияларына шет елдермен салыстырғанда орта шамамен 3 есе аз салық салуға алып келді. Дамудың ашық үлгісіне көшу барысында ұлттық шаруашылық кешендерінің даму мәселелерін ішкі көздердің орнына сыртқы жинақтар арқылы шешу мүмкіншілігінің елесі пайда болады [2].