

## **RESOLUTION**

### **ADOPTED BY THE PLENUM OF THE SUPREME COURT OF THE RUSSIAN FEDERATION**

No 5

Moscow

10 October 2003

#### **On application by courts of general jurisdiction of the commonly recognized principles and norms of the international law and the international treaties of the Russian Federation**

Commonly recognized principles and norms of the international law and the international treaties under Item 4 of Article 15 of the Constitution of the Russian Federation are a component part of its legal system.

Federal law No 101-FZ dated 15 July 1995 “On the International Treaties of the Russian Federation” stipulates that the Russian Federation, advocating the observance of treaty obligations and common norms, confirms its commitment to the basic principle of the international law – the principle of fair implementation of international obligations.

International treaties are one of the main instruments of promoting international cooperation, facilitating broader international relations in particular with participation of the State and non-State organizations, in particular with the participation of national law entities including natural persons. International treaties play a paramount role in protecting human rights and basic freedoms. To this end, it is necessary to further improve judicial activities relating to the implementation of regulations of the international law at intrastate level.

For the purpose of insuring correct and uniform application by courts of law of the international law in administering justice the Plenum of the Supreme Court of the Russian Federation *r e s o l v e s* to provide the following clarifications:

1. The Russian Federation recognizes and guarantees the rights and freedoms of man and citizen in keeping with commonly recognized principles and norms of the international law and pursuant to the Constitution of the Russian Federation (Item 1 of Article 17 of the Constitution of the Russian Federation).

Under Item 1 of Article 46 of the Constitution everyone shall be guaranteed protection of his or her rights and liberties in a court of law.

Bearing in mind what the above mentioned and the provisions of Item 4 of Article 15, Item 1 of Article 17, and Article 18 of the Constitution of the Russian Federation, the rights and liberties of man in conformity with commonly recognized principles and the norms of the international law, as well as the international treaties of the Russian Federation shall have direct effect within the jurisdiction of the Russian Federation. They shall determine the meaning, content and application of the laws, and the activities of the legislative and executive branches and local governments, and shall be secured by the judiciary.

The commonly recognised principles of the international law shall imply the basic imperative norms of the international law accepted and recognised by the international community of States as a whole, the deviation from which is inadmissible.

The commonly recognised principles of the international law, in particular, comprise the principle of universal respect for human rights and the principle of fair implementation of international obligations.

The commonly recognised norm of the international law shall imply the rule of conduct accepted and recognised as legally mandatory by the international community of States as a whole.

The content of the said principles and norms of the international law may be laid down, in particular, in the documents of the United Nations and its specialized agencies.

2. The international treaties of the Russian Federation together with the commonly recognised principles and norms of the international law shall be a constituent part of its legal system (Item 1 of Article 5 of the Federal Law “On the International Treaties of the Russian Federation”).

The effective international treaties signed by the USSR in respect to which the Russian Federation continues to exercise the USSR international rights and obligations as a State-successor of the USSR are also a constituent part of the legal system of the Russian Federation.

Pursuant to Item “a” of Article 2, of the Federal Law «On the International Treaties of the Russian Federation», the international treaty

shall imply an international treaty signed by the Russian Federation with a foreign State (or States) or with an international organisation in writing and regulated by the international law regardless whether such a treaty is contained in one or several interrelated documents and irrespective of its specific name (e.g. convention, pact, treaty, etc.).

The international treaties of the Russian Federation shall be concluded on behalf of the Government of the Russian Federation (intergovernmental agreement), and on behalf of federal executive governmental bodies (interagency agreements).

3. In accordance with Item 3 of Article 5 of the Federal Law “On the International Treaties of the Russian Federation”, terms and conditions of the officially published international treaties of the Russian Federation requiring no adoption of intrastate acts for their application shall have direct effect in the Russian Federation. To implement other provisions of its international treaties the Russian Federation shall enact appropriate legal acts.

The elements whereby a direct application of provisions of an international treaty of the Russian Federation is deemed impossible, comprise, in particular, indications, contained in the treaty, regarding obligations of Member-States to amend national laws of these states.

In hearing civil, criminal or administrative cases the court directly applies such international treaty of the Russian Federation which became effective and mandatory for the Russian Federation and when its provisions do not require adoption of intrastate acts for their application and are capable of giving rise to the rights and obligations for national law entities (Item 4 of Article 15 of the Constitution of the Russian Federation, Items 1 and 3 of Article 5 of the Federal Law “On the International Treaties of the Russian Federation”, Item 2 of Article 7 of the Civil Code of the Russian Federation).

4. In deciding whether the treaty norms of the international law can be applied, the courts should realise that the international treaty enters into force in accordance with the procedure and on the date provided for in the treaty itself or agreed upon by the States which have taken part in negotiations. If there is no such a stipulation or arrangement the treaty enters into force as soon as the consent of all States participating in

negotiations is expressed for the treaty to be mandatory for them (Article 24, Vienna Convention on the Law of Treaties, 1969).

The courts shall bear in mind that the international treaty would be subject to application provided that the Russian Federation expressed its consent through competent governmental bodies for the international treaty to be mandatory to it by one of the actions listed in Article 6 of the Federal Law «On the International Treaties of the Russian Federation» (by signing the treaty; exchanging the documents establishing it; ratifying the treaty; approving the treaty; adopting the treaty; acceding to the treaty; by any other way agreed upon by the treaty parties), and under condition that this treaty has entered into force for the Russian Federation (e.g., Convention on Protection of Human Rights and Basic Freedoms was ratified by the Russian Federation by Federal Law No 54-FZ dated 30 March 1998 and entered into force for the Russian Federation on 5 May, 1998, the day of reposition of the instrument of ratification to the Secretary General of the Council of Europe under Article 59 of the Convention).

Proceeding from the substance of Items 3 and 4 of Article 15 of the Constitution of the Russian Federation, Item 3 of Article 5 of the Federal Law “On the International Treaties of the Russian Federation” the courts themselves can apply those effective international treaties which were officially published in the Legislative Acts Collection of the Russian Federation or in the Bulletin of International Treaties in the manner established by Article 30 of the above mentioned Federal Law. International treaties of the Russian Federation of an interagency nature are published according to the decision of federal bodies of executive authorities on behalf of which such treaties were signed, in official publications of these bodies.

The international treaties of the USSR mandatory for the Russian Federation as a State-successor of the USSR have been published in official publications of the Supreme Soviet of the USSR, Council of Ministers (Cabinet of Ministers) of the USSR. The texts of these treaties have also been published in collections of international treaties of the USSR, but this publication was not official.

Official information of the Ministry of Foreign Affairs of the Russian Federation on the entry into force of the international treaties signed on behalf of the Russian Federation and of the Government shall be subject to publication in accordance with the same procedure that the international

treaties (Article 30 of the Federal Law “On the International Treaties of the Russian Federation).

5. International treaties which have a direct and immediate effect in the legal system of the Russian Federation shall be applied by the courts including military ones, in resolving civil, criminal and administrative cases, in particular:

in considering civil cases, provided that the international treaty of the Russian Federation has set out other rules than the Russian Federation legislation regulating the relations brought to court for consideration;

in trying civil and criminal cases, provided that the international treaty of the Russian Federation has set out other rules of court proceedings than the Civil Procedural or Criminal Procedural Law of the Russian Federation;

in trying civil and criminal cases, provided that the international treaty of the Russian Federation regulates relations, including the ones with foreign individuals which were brought to court for trial (e.g., in judging the cases listed in Article 402 of the Civil and Procedural Code of the Russian Federation, appeals on the execution of decisions taken by foreign courts, complaints against decisions on extradition of individuals charged with a crime or convicted by a court of a foreign State);

in trying cases on administrative offences, provided that the international treaty of the Russian Federation stipulates other rules than those set forth by the legislation on administrative infractions.

To draw attention of courts to the fact that the consent for the international treaty to be mandatory for the Russian Federation should be expressed in the form of a federal law, provided that this treaty stipulates other rules than the federal laws (Item 4 of Article 15 of the Constitution of the Russian Federation, Items 1 and 2 of Article 5, Article 14, Item 1 «a» of Article 15 of the of the Federal Law “On the International Treaties of the Russian Federation”, Item 2 of Article 1 of the Civil and Procedural Code of the Russian Federation, Item 3 of Article 1 of the Criminal and Procedural Code of the Russian Federation.

6. International treaties with the norms providing for indications of criminal offences shall not be applied by courts directly because such treaties stipulate directly the obligation of States to ensure the implementation of obligations set out by the treaty by making certain

offences punishable by the internal (national) law (e.g., the Uniform Convention on Drugs, 1961, International Convention against Taking the Hostages, 1979, the Convention for the Suppression of Unlawful Seizure of Aircrafts, 1970).

According to Article 54 and Subitem « o » of Article 71 of the Constitution of the Russian Federation and Article 8 of the Criminal Code of the Russian Federation, a person who has committed an offence having all elements of a crime set out by the Criminal Code of the Russian Federation is subject to criminal liability in the Russian Federation.

In this connection, the international legal norms stipulating component elements of crimes shall be applied by courts of the Russian Federation in those circumstances when the norm of the Criminal Code of the Russian Federation stipulates directly the need to apply the international treaty of the Russian Federation (e.g., Articles 355 and 356 of the Criminal Code of the Russian Federation).

7. By virtue of Item 4 of Article 11 of the Criminal Code of the Russian Federation the issue of criminal liability of diplomatic representatives of foreign States and other citizens enjoying immunity in the event of committing an offence by these persons in the territory of the Russian Federation is resolved in accordance with the norms of the international law (in particular, pursuant to the UN Convention on Privileges and Immunities, 1946, UN Convention on Privileges and Immunities of Specialized Agencies, 1947, Vienna Convention on Diplomatic Relations, 1961, Vienna Convention on Consular Relations, 1963).

The category of individuals enjoying immunity includes, for instance, heads of diplomatic missions, members of missions having diplomatic rank and family members thereof, if they are not citizens of the host country. Other persons enjoying immunity comprise, in particular, heads of States, governments, heads of foreign policy agencies of States, staff members of diplomatic missions in charge of administrative and technical services of the mission, family members thereof, families living together with the said persons provided they are not citizens of the host State and not residing there permanently as well as other persons enjoying immunity in keeping with commonly recognised principles and norms of the international law and the international treaties of the Russian Federation.

8. The rules of the effective international treaty of the Russian Federation, the consent on the mandatory nature of which was issued in the form of a federal law shall be given priority against the laws of the Russian Federation.

The rules of the effective international treaty of the Russian Federation, the consent on the mandatory nature of which was issued in the form of a federal law shall be given priority against the regulatory acts published by a governmental body that has signed the treaty (Item 4 of Article 15, Articles 90, 113 of the Constitution of the Russian Federation).

9. In administering justice the courts shall bear in mind that pursuant to the substance of Item 4 of Article 15 of the Constitution of the Russian Federation, Articles 369, 379, Item 5 of Article 415 of the Criminal and Procedural Code of the Russian Federation, Articles 330, 362-364 of the Civil and Procedural Code of the Russian Federation, an incorrect application by the court of commonly recognised principles and norms of the international law and the international treaties of the Russian Federation may serve as a reason to repeal or amend a court act. Incorrect application of the norm of the international law may occur in the event when the court failed to apply the norm of the international law subject to application or, on the contrary, the court has applied the norm of the international law which was not subject to application or when the court misinterpreted the norm of the international law.

10. To clarify to courts that the interpretation of the international treaty should be done in accordance with the Vienna Convention on the Law of the Treaties of 23 May, 1969 (Section 3; Articles 31-33).

In accordance with Subitem «b» of Item 3 of Article 31 of the Vienna Convention, in interpreting the international treaty, one should, together with its context, take into account the follow-up practice of the treaty which establishes an agreement of its members with regard to its interpretation.

The Russian Federation, as a Member-State of the Convention on Protection of Human Rights and Basic Freedoms recognises the jurisdiction of the European Court on Human Rights as mandatory with respect to interpretation and application of the Convention and Protocols thereof in the event of an assumed breach by the Russian Federation of provisions of these treaty acts when the assumed breach has taken place after their entry into force in respect to the Russian Federation (Article 1 of the Federal Law

“On Ratification of the Convention on Protection of Human Rights and Basic Freedoms and Protocols thereof » No 54-FZ of 30 March, 1998). That is why the application by courts of the said Convention should take into account the practice of the European Court on Human Rights to avoid any violation of the Convention on Human Rights and Basic Freedoms.

11. The Convention on Human Rights and Basic Freedoms has a mechanism of its own which includes a compulsory jurisdiction of the European Court on Human Rights and a systematic monitoring over the execution of the decisions of the Court by the Committee of Ministers of the Council of Europe. In accordance with Item 1 of Article 46 of the Convention these decisions with regard to the Russian Federation adopted finally shall be mandatory for all State bodies of the Russian Federation including for the courts.

The implementation of the decisions related to the Russian Federation presumes, if necessary, the obligation on the part of the State to take measures of a private nature aimed at eliminating violation of human rights stipulated by the Convention and the impact of these violations on the applicant as well as measures of a general nature to prevent repetition of such violations. The courts within their scope of competence should act so as to ensure the implementation of obligations of the State stemming from the participation of the Russian Federation in the Convention on Protection of Human Rights and Basic Freedoms.

If the court in hearing a case has established the circumstances that contributed to the violation of the rights and liberties of citizens guaranteed by the Convention, the court has the right to issue its ruling (or decision) which would draw attention of relevant organisations and officials to the circumstances and facts of violation of the rights and liberties requiring that necessary measures be taken.

12. The courts in administering justice shall take into account that by virtue of Item 1 of Article 6 of the Convention on Protection of Human Rights and Basic Freedoms everyone has the right to court proceedings within a reasonable time period. In calculating the said time period on criminal cases the court proceedings shall cover both the pre-trial investigation procedure and the court proceedings as such.

According to the legal positions worked out by the European Court on Human Rights the calculation of the time period starts at the time when the



person is charged with an offence or apprehended, or put into custody, or other measures of procedural enforcement have been taken and ends when a sentence has entered into force or criminal case or criminal persecution was stopped.

The calculation of the term of court proceedings on civil cases, in accordance with Item 1 of Article 6 of the Convention, begins at the time when lawsuit has been filed and ends when the court act has been executed.

Thus, pursuant to Article 6 of the Convention, the execution of a court decision is viewed as a component of “court proceedings”. With this in mind, when considering the issues of trial postponement, deferral, modification of the mode and procedure of court decision execution and when considering complaints on bailiffs’ action, the courts shall take into account the need to comply with the requirements of the Convention on the Execution of Court Decisions within a reasonable time period.

In establishing to what extent the time period of court proceedings was reasonable, attention should be paid to the complexity of the case, behaviour of the applicant (claimant, defendant, suspect, accused), conduct of the State represented by relevant bodies.

13. When considering civil and criminal cases the courts should bear in mind that pursuant to Article 47 of the Constitution of the Russian Federation nobody can be denied the right for considering his or her case by the court and by the judge to whose jurisdiction it is referred to by virtue of law. Under Item 1 of Article 6 of the Convention on Protection of Human Rights and Basic Freedoms everyone when his or her civil rights and responsibilities are defined or in considering any criminal charge brought against him or her has the right to be tried by the court established in accordance with the law.

Taking into consideration decisions of the European Court on Human Rights with regard to the judicial system of the Russian Federation, this rule extends not only to judges of federal courts and justices of the peace, but also to the members of the jury represented by citizens of the Russian Federation included into the list of the jurors and called up to administer justice in accordance with the procedure established by the law.

14. The courts, in deciding the issues relating to the extension of the custody term, should take into account that under Item 3 of Article 5 of the Convention on Protection of Human Rights and Basic Freedoms every

person arrested or apprehended has the right to a court trial within a reasonable time limit or to be released before the trial.

In accordance with the legal positions of the European Court on Human Rights, in establishing the time period the accused is to be kept in custody, the calculation of the term starts as of the day the accused (the defendant) was put into custody and ends as of the day when the judgement was passed by the trial court.

It should be taken into account that a substantiated suspicion against a person put into custody for having committed an offence, serves as a necessary condition for the arrest to be lawful. At the same time such a suspicion cannot be the only reason for a protracted detention in custody. There must be other circumstances that could justify the isolation of an individual from the society. Such circumstances may include a possibility that the suspect or the accused may continue criminal activities or escape from pre-trial investigation or court prosecution or else falsify the evidence on the criminal case, or conspire with witnesses.

The circumstances indicated should be real, well-founded, i.e. be proved by a credible evidence. In the event of extension of detention in custody the courts should indicate specific circumstances justifying the extension of such a term and give evidence proving the existence of such circumstances.

15. When taking a decision whereby the accused is put into custody as a measure of restraint or the term for detention in custody is extended, in considering complaints against unlawful actions of officials of the bodies conducting preliminary investigation, the courts should take into account the need to observe the rights of persons kept in custody specified by Articles 3, 5, 6 and 13 of the Convention on Protection of Human Rights and Basic Freedoms.

In taking a decision on an appeal to release from custody or complaint against the prolongation of the duration of detention in custody the court has to take into account the provisions of Article 3 of the Convention on Protection of Human Rights and Basic Freedoms according to which nobody should be subject to tortures and inhuman or dignity degrading treatment or punishment.

In the practice of application of the Convention on Protection of Human Rights and Basic Freedoms by the European Court on Human Rights, “inhuman treatment” refers to the cases when such a treatment, as a rule, is of a deliberate nature, extends over several hours or when as a result of such a treatment the person has suffered a real physical damage or undergone serious physical or psychological sufferings.

One should bear in mind that under Article 3 of the Convention and requirements contained in decisions of the European Court on Human Rights the conditions of detention of the accused in custody should be compatible with the respect of human dignity.

The treatment degrading human dignity is considered to be, in particular, a treatment that provokes in the individual a feeling of fear, anxiety and one’s own inferiority.

At the same time the individual should not be caused deprivation and sufferings in a greater degree than the level of sufferings which is inevitable in case of a freedom deprivation while health and well-being of the individual should be guaranteed taking into account practical requirements of the detention regime.

The above mentioned level is assessed on the basis of specific circumstances, in particular, the duration of an unlawful treatment of a person, the nature of physical and psychological circumstances of such a treatment. In certain cases sex, age and health conditions of an individual who was subject to inhuman or dignity degrading treatment are taken into account.

16. In case difficulties arise in interpreting commonly recognised principles and norms of the international law, the international treaties of the Russian Federation the courts should be recommended to use acts and decisions of international organisations, including the UN bodies and its specialized agencies and also to address in this case the Legal Department of the Ministry of Foreign Affairs of the Russian Federation, the Ministry of Justice of the Russian Federation (e.g., to clarify the issues relating to the duration of validity of the international treaty, the composition of the treaty Member-States, international practice of its application).

17. To recommend to the Judicial Department under the Supreme Court of the Russian Federation:

in co-ordination with the Commissioner of the Russian Federation to the European Court on Human Rights to inform judges on the practice of the European Court on Human Rights, especially with regard to decisions regarding the Russian Federation by distributing authentic texts and their Russian translations ;

to provide on a regular and timely basis the judges with authentic texts and official translations of the international treaties of the Russian Federation and other acts of the international law.

18. To recommend the Russian Academy of Justice when organizing education process for training, retraining and upgrading courses for judges and staff-members of court apparatus to pay a special attention to the study of commonly recognised principles and norms of the international law and the international treaties of the Russian Federation, to analyse on a regular basis the sources of the international and European law, to publish necessary practical booklets, comments, monographs and other teaching, methodological and scientific literature.

19. To entrust the Judicial Chambers on Civil and Criminal Cases, Military Chamber of the Supreme Court of the Russian Federation and also the Russian Academy of Justice with preparation of proposals on adding to the already adopted decisions of the Plenum of the Supreme Court of the Russian Federation relevant provisions on application of the commonly recognised principles and norms of the international law and the international treaties of the Russian Federation.

**President ,  
Supreme Court  
of the Russian Federation**

**V.M. Lebedev**

**Plenum Secretary,  
Justice of the Supreme Court  
of the Russian Federation**

**V.V. Demidov**