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Implementation of International Law in CIS States: Theory and Practice

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Abstract

One of the most interesting aspects of CIS constitutional reforms is the gradual 'opening' of the domestic legal systems of these countries to international law. Many CIS countries have rejected the traditional dualist approach to the implementation of international law in domestic legal systems and have proclaimed international law to be part of domestic law. Some have proclaimed the supremacy of treaties over contrary domestic legislation. However, the actual status of international law in CIS countries is determined not only by constitutional clauses, but also by the willingness of domestic courts to rely on that body of law. An analysis of available judicial practice in CIS countries indicates that this 'opening' of the domestic legal orders to international law has not always been transformed into reality. The paper attempts to assess the impact on actual practice of the constitutional declarations of CIS states regarding international law. It examines the judicial practice of CIS countries in this area and the principal policy factors affecting the implementation of international law in these states. It concludes that only some of these countries take their constitutional clauses concerning international law seriously.

1 Introduction

The constitutions of many member states of the Commonwealth of Independent States (CIS)¹ have rejected the traditional Soviet dualist approach to the implementation of international law in domestic legal systems. A comparative analysis of new CIS

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¹ The Commonwealth of Independent States was established by an agreement signed by Russia, Belarus and Ukraine in 1991 (See 31 *ILM* (1992) 143). This regional organization now comprises all the former Soviet republics, with the exception of the three Baltic states.

constitutions² suggests that these states may be categorized in three different groupings according to the provisions included in their constitutions concerning international law.

In the constitutions of the first group of states, international law, usually treaty law, is proclaimed to be part of the law of the land. In addition, these constitutions accord a higher hierarchical status to international rules. Article 15(4) of the 1993 Constitution of Russia³ provides that ‘the generally recognized principles and norms of international law and the international treaties of the Russian Federation shall constitute an integral part of its legal system’. It also states that ‘if an international treaty of the Russian Federation establishes other rules than those stipulated by the law, the rules of the international treaty shall apply’. In Article 8 of the 1994 Constitution of Moldova we read that ‘the Republic of Moldova pledges to respect the Charter of the United Nations and the treaties to which it is a party’. It goes on to assert that ‘wherever disagreement appears between conventions and treaties signed by the Republic of Moldova and her own national laws, priority shall be given to international regulations’. According to Article 148(II) of the 1995 Constitution of Azerbaijan, ‘international treaties, to which the Azerbaijan Republic is a party, are an inalienable substantive part of the legislative system of Azerbaijan’. Its Article 151 also provides that ‘when disputes, contradictions arise between normative-legal acts included in the legislation system of the Azerbaijan Republic (excepting the Constitution of the Azerbaijan Republic and the acts passed by way of referendum) and international treaties, of which the Azerbaijan Republic is a party, the international treaties apply’. The 1995 Constitution of Kazakhstan declares, in Article 4, that ‘international treaties ratified by the Republic of Kazakhstan have priority over its laws and are directly implemented except in cases when the application of an international treaty shall require the promulgation of a law’. Likewise, Article 6 of the 1996 Constitution of Georgia states that ‘the legislation of Georgia corresponds with universally recognized norms and principles of international law’. It also provides that ‘international treaties or agreements concluded with and by Georgia, if they are not in contradiction to the Constitution of Georgia, have prior legal force over internal normative acts’. Similar provisions are contained in the 1995 Armenian Constitution (Article 6) and the 1994 Constitution of Tadjikistan (Article 11).

The second group of states comprises those whose constitutions expressly declare

² Provisions of some CIS constitutions pertaining to international law have already been analysed in Stein, ‘International Law in Internal Law: Toward Internationalization of Central-Eastern European Constitutions?’, 88 *AJIL* (1994) 427; Vereshchetin, ‘New Constitutions and the Old Problem of the Relationship between International Law and National Law’, 7 *EJIL* (1996) 29; *Idem*, ‘Some Reflections on the Relationship between International Law and National Law in the Light of New Constitutions’, in R. Mullerson, M. Fitzmaurice and M. Andenas (eds), *Constitutional Reform and International Law in Central and Eastern Europe* (1998) 5.

³ *Konstitutsia Rossiiskoi Federatsii* (Constitution of the Russian Federation) 1993 (hereinafter cited as 1993 Constitution). The text of the 1993 Constitution was published in *Rossiiskaya Gazeta*, 25 December 1993, at 3, Col. 1. For the English language texts of the 1993 Russian Constitution and other constitutions of the CIS states cited in this article, see A. P. Blaustein and G. H. Flanz (eds), *Constitutions of the Countries of the World* (1971, Supplement).

that international law forms part of the law of the land but fail to establish the hierarchical status of international rules in the domestic legal system. Article 9 of the 1996 Constitution of Ukraine sets down that 'international treaties currently in force, as ratified by the Supreme Rada of Ukraine, form part of Ukraine's national legislation'. However, it does not establish priority for international treaties over contrary domestic legislation. Another example is provided by the 1993 Constitution of Kirghistan, which declares, in Article 12, that 'inter-state treaties ratified by the Republic of Kirghistan and other norms of international law form a constituent and directly applicable part of the legislation of the Republic of Kirghistan'.

Finally, the third group of states incorporated only vague references to international law in their constitutions. Thus, Article 17 of the 1992 Constitution of Uzbekistan provides that the foreign policy of the Republic of Uzbekistan 'shall be based on the principles of sovereign equality of the states, non-use of force or threat of its use, inviolability of frontiers, peaceful settlement of disputes, non-interference in the internal affairs of other states, and other universally recognized norms of international law'. This reference to international law would appear to be just a statement of foreign policy. It is doubtful that it will be interpreted as a rule incorporating international law into Uzbekistan's domestic legal order. Turkmenistan opted for a similar formula in its 1992 Constitution. Its Article 6 proclaims that 'Turkmenistan shall acknowledge priority of generally recognized norms of international law'. However, as this provision is included in a clause concerning foreign policy, its acknowledgement of 'the priority of generally recognized norms of international law' may prove to have no domestic impact.

The case of Belarus is more difficult to classify. Article 8 of its 1996 Constitution proclaims that 'the Republic of Belarus recognizes the supremacy of the universally recognized principles of international law and ensures that its laws comply with such principles'. In addition, its Article 21 provides that 'the state guarantees the rights and freedoms of the citizens of Belarus that are enshrined in the Constitution and the laws, and specified in the state's international obligations'. It may be argued that, at least theoretically, Belarus belongs to the first group. However, it may also be convincingly argued that the references to international law remain overly vague, with the result that Belarus may fall in the third category.

The constitutions of the countries in the first and second groups represent an important step towards a broader application of international law in the domestic legal orders of these states. However, this in itself cannot be considered a guarantee that international law will enjoy the status envisaged for it by their authors. It is well known that in many countries constitutional rules remain ineffective. Many instances could be cited of domestic courts simply ignoring broad constitutional clauses referring to international law. The actual status of international law in the CIS countries is, and will continue to be, determined not only by the relevant constitutional clauses but also by the willingness of domestic courts to rely on that body of law. Hence, an assessment of the actual status of international law in the domestic legal systems of CIS states requires a careful examination of their judicial practice. Experience also suggests that effective implementation of constitutional

provisions declaring international law to be part of domestic law depends on various political-legal factors that either favour or oppose the direct application of international law. These factors include the nature of applicable international rules; the strengths of domestic democratic institutions and the rule of law; independence and professionalism of the judiciary; and participation in international institutions.

This paper will examine the existing judicial practice of CIS countries in relation to the implementation of international law. Principal policy factors affecting domestic implementation of international law in these states will be discussed. The article will then attempt to assess the impact of the constitutional declarations of CIS states regarding international law on the actual practice of these countries.

2 The Role of Courts

Although international norms bind all branches of government, domestic courts probably constitute the most important organs for the implementation of international norms at the domestic level. A comparative analysis of CIS constitutions indicates that only some of these countries have established judicial guarantees for the compliance by domestic authorities with international commitments.

Russia became the first CIS country to introduce far-reaching reforms regarding the relationship between international and domestic law. These normative innovations were accompanied by a general reform of the judicial system. An important development was the adoption of the idea of constitutional review as a constituent element of democracy based on the rule of law. Like other European countries emerging from oppressive or totalitarian regimes, Russia entrusted the task of enforcement of the Constitution to a new judicial body: the Constitutional Court. This Court is designed to guarantee the supremacy of the Constitution and to ensure the institutional protection of democracy and fundamental human rights. Under Article 125(4) of the Constitution and the 1994 Constitutional Law on the Constitutional Court,⁴ the Court has the power to review the constitutionality of 'laws' in response to complaints filed by individuals or juridical persons alleging violations of constitutional rights and freedoms. This procedure, based on the model of the German Federal Constitutional Court, means that individuals and juridical persons have direct access to constitutional review. Complaints regarding the constitutionality of statute-level laws may be filed with the Russian Constitutional Court by individuals and juridical persons under Article 125(4) of the Constitution. Moreover, Article 46 of the Constitution also provides for a general right of review in 'ordinary' courts of all normative acts which violate human rights and freedoms. This Article sets down that 'everyone shall be guaranteed protection of his or her rights and freedoms in a court of law'. Although the Constitutional Court has exclusive power to declare statutes

⁴ *Sobranie zakonodatel'stva Rossiiskoi Federatsii* (Compilation of Legislation of the Russian Federation, hereinafter referred to as *Sobranie*), No. 13, item 1447 (1994).

unconstitutional, 'ordinary' courts have been granted the power to review the constitutionality of laws or other normative acts that litigants seek to apply.⁵

The Ukrainian Constitution also envisions the creation of a Constitutional Court. Although Article 150 of the Constitution does not provide for the right of individuals to file constitutional complaints with the Constitutional Court, the 1996 Law of Ukraine on the Constitutional Court makes such a provision.⁶ Under its Article 42 'constitutional petitions' to the Constitutional Court may be submitted by Ukrainian citizens, aliens, stateless persons and legal entities. Because Ukrainian courts, especially the Constitutional Court, are designed to be able to enforce the individual's constitutional rights against the government, one could expect that they will also use their power to enforce international treaties, especially human rights treaties, ratified by Ukraine. As in Russia, the Ukrainian Constitution also proclaims a general right to judicial review in 'ordinary' courts. Under Article 55 of the Ukrainian Constitution 'everyone is guaranteed the right to challenge in court the decisions, actions or omissions of bodies of state power, bodies of local self-government, officials and officers'.

The establishment of a constitutional court and the judicial review of legislative and administrative acts are also envisioned by certain other CIS states, including Armenia, Belarus, Georgia and Moldova. Constitutional guarantees are provided in these countries for the right to recourse to the courts in cases of a violation of individual rights by public authorities. In several CIS countries, courts have also been granted the power to dismiss a domestic legislative or executive act on the ground that it violates international law, particularly international human rights standards. It is doubtful, however, whether the courts of all CIS countries will be able to effectively enforce the individual's constitutional and international human rights against governmental and legislative actions. The major problem appears to be the independence of the judiciary.

An independent and professional judiciary is often considered to be a crucial element in the effectiveness of constitutional provisions which declare the supremacy of international law.⁷ Judicial reform remains an important goal for many CIS states. While some countries in the region have failed to establish adequate guarantees for an independent and impartial judiciary,⁸ the majority of the other countries have

⁵ For a detailed discussion of the Russian judicial system and judicial review, see G. M. Danilenko and W. E. Burnham, *The Law and Legal System of the Russian Federation* (1999), at 51–109.

⁶ For an English language text of the 1996 Law, see 4 *Bulletin of the Constitutional Case Law. Special Edition. Basic Texts*, at 106.

⁷ Cf. 65(II) *Institut de droit international, Annuaire* (1993) 256 ('national courts should be empowered by their domestic legal order to interpret and apply international law with full independence').

⁸ For example, the Human Rights Committee expressed doubts about 'the independence and impartiality of the judiciary in Azerbaijan'. Concluding Observations of the Human Rights Committee: Azerbaijan, UN Doc. CCPR/C/79/Add. 38 (1994). The Committee has noted with respect to Belarus that 'the procedures relating to tenure, disciplining and dismissal of judges at all levels do not comply with the principles of independence and impartiality of judiciary.' Concluding Observations of the Human Rights Committee: Belarus, UN Doc. CCPR/C/79/Add. 86 (1997).

adopted at least basic constitutional safeguards in this area.⁹ As regards professionalism, it is important to note that in many CIS countries there are serious shortcomings in the recruitment, training and enumeration of judges. Domestic courts have lost many experienced judges who have chosen to leave the bench for private practice. A further factor influencing the effective implementation of international law by CIS judges is the fact that many judges received their training, and thus formed their value systems, during the Soviet era. While CIS judges can now gain some training in the legal principles of an 'open' legal system, experience indicates that this is far from adequate. Additional instruction is required on issues pertaining to the direct application of international treaty and customary law.

3 Judicial Practice: An Overview

The Russian Constitutional Court has developed an extensive jurisprudence based on international law. In reviewing the constitutionality of various domestic acts, the Court frequently relies on international law. Analysis of the practice of the Russian Constitutional Court indicates that it invokes international law in almost all decisions concerning human rights.

The pronouncements of the Russian Constitutional Court have already been examined in some detail in recent publications.¹⁰ Only two points need to be emphasized here. First, the Constitutional Court had begun to rely on international law even prior to the adoption of the 1993 Constitution. While the previous Constitution lacked a clear rule declaring international law to be part of the law of the land, the Constitutional Court, in the *Labor Code Case*,¹¹ stated that all Russian courts should 'assess the applicable law from the point of view of its conformity with the principles and rules of international law'. The approach adopted by the pre-1993 Constitutional Court indicates that courts, in a general political environment favouring application of international law, may rely on international law even if the constitution does not expressly declare international law to be part of the law of the land.

⁹ There is, of course, no guarantee that judges in these countries would be absolute immune to outside influence. Experience suggests that in all countries politics may undermine judicial independence in various indirect and subtle ways. In the CIS countries the actual independence of judges presents special problems because judges are career civil servants who often perceive themselves as government officials. This means that it may be overly optimistic to expect all CIS judges to act as independent watchdogs of government administration.

¹⁰ See G. M. Danilenko, 'The New Russian Constitution and International Law', 88 *AJIL* (1994) 451; *Idem*, 'International Law in the Russian Legal System', *Proceedings of the 98th Annual Meeting of the American Society of International Law* (1998) 294; Henderson, 'Reference to International law in Decided Cases of the First Russian Constitutional Court', in Mullerson, Fitzmaurice and Andenas, *supra* note 2, at 59.

¹¹ *Vestnik Konstitutsionnogo Suda Rossiiskoi Federatsii* (Herald of the Constitutional Court of the Russian Federation, hereinafter referred to as VKS), 1993, No. 1, at 29.

Second, the Constitutional Court often relies not only on treaties¹² but also on ‘the generally recognized principles and norms of international law’. In doing so, the Court bases its authority to apply international law primarily on the general incorporation clause included in Article 15(4) of the 1993 Constitution. In addition, it frequently invokes a special constitutional clause dealing with human rights. Under Article 17 of the 1993 Constitution, ‘the rights and freedoms of the human being and citizen shall be recognized and guaranteed in the Russian Federation in conformity with the generally recognized principles and norms of international law’. For example, in the *Case Concerning Certain Normative Acts of the City of Moscow and Some Other Regions*,¹³ which dealt with attempts on the part of the local authorities to reintroduce the infamous residence permit practice, the Constitutional Court noted that, under Article 17 of the Russian Constitution, human rights are recognized and guaranteed ‘in conformity with the generally recognized principles and norms of international law’. The Court then emphasized that the right to freedom of movement and the right to freely choose a place of temporary or permanent residence is guaranteed not only by the Constitution but also ‘by the International Covenant on Civil and Political Rights (Article 12), other international and international legal acts, including Protocol No. 4 to the European Convention on Human Rights (Article 2)’. In the *Case Concerning Articles 180, 181, 187 and 192 of the Arbitration Procedural Code*,¹⁴ which raised questions about appeal procedures laid down by the Arbitration Procedure Code, the Constitutional Court found that the state must ensure a fair, independent and effective hearing of cases. According to the Court, this obligation results not only from the Constitution but also ‘from the generally recognized principles and norms of international law, in particular those which are embodied in Articles 8 and 29 of the Universal Declaration of Human Rights and Article 2 (2, 3(a)) of the International Covenant on Civil and Political Rights’. The Court also cited Article 14(6) of the Covenant on Civil and Political Rights, which provides for revision of criminal convictions on the ground that new or newly discovered facts demonstrate conclusively that there has been a miscarriage of justice. Although the *Case Concerning Articles 180, 181, 187 and 192 of the Arbitration Procedural Code* dealt with arbitration and not criminal procedure, the Court applied Article 14 of the Covenant by analogy and stated that ‘under Articles 15(4) and 17(1) of the Constitution of the Russian Federation the right of everyone to court protection envisioned by Article 46(1) of the Constitution must be ensured in accordance with the above norm of

¹² An example may be the *Case Concerning Article 42 of the Law of the Chuvash Republic on the Election of the Deputies of the State Assembly of the Chuvash Republic* (VKS, 1995, No. 4, at 2). In that case the Constitutional Court found that local regulations governing elections violated not only Article 3 of the 1993 Constitution, which guarantees ‘free elections’ but also Article 25 of the International Covenant on Civil and Political Rights. Article 25 of the Covenant provides that every citizen must have the right and the opportunity, without any discrimination and without unreasonable restrictions, to vote and be elected at ‘genuine periodic elections which shall be held by secret ballot, guaranteeing the free expression of the will of the electors’. The Court noted that Article 25 of the Covenant ‘specifies’ electoral guarantees established by the general language of Article 3 of the 1993 Constitution.

¹³ VKS, 1996, No. 2, at 42.

¹⁴ *Sobranie*, No. 6, item 784 (1998).

international law, which has a generally recognized character and as such constitutes an integral part of the legal system of the Russian Federation’.

Article 15(4) of the 1993 Russian Constitution has provided a normative basis for a broader application of international law by other Russian courts, including courts of general jurisdiction (‘ordinary’ courts) and arbitration (commercial) courts.¹⁵ ‘Ordinary’ Russian courts have much less experience in applying international law than does the Constitutional Court. However, these courts have also taken notice of the new source of law which may govern cases at hand. The Supreme Court took the lead by issuing a special ruling on the matter in the form of an ‘explanation’. ‘Explanations’ of the Supreme Court are abstract opinions that are binding on all lower courts. The 1995 Ruling ‘*On Some Questions Concerning the Application of the Constitution of the Russian Federation by Courts*’¹⁶ instructed all lower courts to apply international law. In 1995 the Supreme Court also adopted a more specific ‘explanation’ which instructed the courts to directly apply Article 9 of the International Covenant on Civil and Political Rights.¹⁷ In accordance with these guidelines, the Supreme Court started to invoke international treaties in individual cases. For example, in *Re Komarov*¹⁸ the defendant challenged the decision to hold an *in camera* hearing of a criminal case. The Supreme Court upheld the lower court decisions by referring, among other things, to Article 14 of the Covenant on Civil and Political Rights, according to which the public may be excluded from all or a part of a trial ‘when the interest of the private lives of the parties so requires’. A similar situation has developed in relation to the Russian arbitration (commercial) courts, whose task is to resolve economic disputes. Although

¹⁵ Constitutional provisions concerning international law were reaffirmed in the 1996 Federal Constitutional Law on the Judicial System of the Russian Federation (*Sobranie*, No. 1, item 1 (1996)) which regulates the activities of all courts in Russia. Under Article 3 of the 1996 Law, all Russian courts must apply ‘generally recognized principles and norms of international law and international treaties of the Russian Federation’.

¹⁶ *Biulleten’ Verkhovnogo Suda Rossiiskoi Federatsii* (Bulletin of the Supreme Court of the Russian Federation, hereinafter referred to as *BVS*), 1996, No. 1, at 3.

¹⁷ The Ruling of the Plenary Session of the Supreme Court of the Russian Federation ‘*On the Judicial Practice Concerning Verification of the Legality and Justification of Arrests or the Extension of Periods of Detention*’ (*BVS*, 1995, No. 1, at 3) states:

The courts must take into account that, in accordance with Article 9 of the International Covenant on Civil and Political Rights, which entered into force on May 23, 1976, and the rules of which, under Article 15 paragraph 4 of the Constitution of the Russian Federation, are an integral part of the legal system of the Russian Federation and have priority over its domestic legislation, everyone who is deprived of his liberty by arrest or detention has the right to institute proceedings before a court in order that the court may decide, without delay, the lawfulness of his detention and order his release if the detention is unlawful.

In view of this, the complaint of anyone detained on the suspicion of committing a crime, or the complaint of her or his lawyer or legal representative, concerning the lawfulness and well-foundedness of the detention must be considered and resolved by the court in the manner established by the criminal procedure legislation.

This Ruling significantly expanded judicial protection of detainees because under the existing Russian Criminal Procedure Code only persons *arrested* (not simply detained) on a criminal charge have the right to bring proceedings before a court.

¹⁸ *BVS*, 1997, No. 2, at 1.

these courts do not have a great deal of experience in applying the principles and norms of public international law, they frequently apply norms of international treaties¹⁹ and commercial customs²⁰ in the area of private international law.²¹

Case law on the implementation of international law in other CIS countries is only now emerging.²² The Belarussian Constitutional Court has developed some jurisprudence concerning the implementation of international law in domestic law. In the *Case Concerning Article 33 of the Labor Code*,²³ the Constitutional Court declared certain discriminatory provisions of the Labor Code to be unconstitutional and referred, among other things, to Articles 7 and 28 of the Universal Declaration of Human Rights, Article 6 of the Covenant on Economic and Social Rights and recommendations of the International Labour Organisation (ILO). The Court emphasized that 'according to Article 8 of the Constitution the Republic of Belarus recognizes the priority of the generally recognized principles of international law and ensures that its legislation conforms to these principles'. In the *Case Concerning the Decree of the President on Ensuring Stability and Law and Order in Belarus*,²⁴ the Court declared that the ban on strikes and suspension of the activities of the Free Trade Union of Belarus contravened 'international legal acts ratified by Belarus', in particular Article 22 of the Covenant on Civil and Political Rights and Article 4 of ILO Convention No. 87 on freedom of association.

Prior to the adoption of the 1995 Constitution of Kazakhstan, this country's Constitutional Court had the power to hear constitutional complaints filed by individuals and legal entities. Two decisions of the Constitutional Court of Kazakhstan initiated by private individuals and legal entities relied not only on the then existing Constitution but also on the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (not ratified by Kazakhstan at the time the decision was rendered).²⁵ However, the 1995 Constitution of Kazakhstan abolished the Constitutional Court, replacing it with a Constitutional Council which has only limited powers of judicial review. Individuals no longer enjoy the right to file constitutional complaints directly to the Constitutional Council. As a result, it is unlikely that it will be able to continue the previous practice of the Constitutional

¹⁹ See, e.g., *Vestnik Vysshego Arbitrazhnogo Suda Rossiiskoi Federatsii* (Herald of the Supreme Arbitration Court of the Russian Federation), 1998, No. 4, at 38–40 and 45–46 (cases referring to the 1929 Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air and the 1980 United Nations Convention for the International Sale of Goods).

²⁰ See, e.g., *ibid.* at 40–41 (a case referring to 'commercial customs in the sphere of international trade').

²¹ For details, see Neshataeva, 'Mezhdunarodnoe pravo v sudebnoi praktike arbitrazhnykh sudov' (International Law in the Judicial Practice of Arbitration Courts), 7 *Zakon* (1998) 87.

²² The following overview of judicial practice in the CIS states cannot be considered as complete, owing to the difficulties of obtaining information.

²³ *Vesnik Kanstytutsyiynaya Suda Respubliki Belarus* (Herald of the Constitutional Court of the Republic of Belarus, hereinafter referred to as *VKS Belarus*), 1995, No. 1, at 30.

²⁴ *VKS Belarus*, 1995, No. 4, at 113.

²⁵ See the 1992 *Case Concerning the Ruling of the Supreme Soviet of Kazakhstan 'On the Gradual Introduction of Minimal Consumer Budgets'* and the 1993 *Case Concerning the Ruling of the Council of Ministers of Kazakhstan 'On the Procedure for Hiring and Dismissal of Heads of State Enterprises'*, reprinted in Z. Baishev, *Sudebnaya zashchita konstitutsii* (Judicial Protection of the Constitution) (1994) 129–137, 159–166.

Court. Yet, as a matter of principle, the Constitutional Council has already made it clear in the *Case Concerning Interpretation of Articles 4(1) and 12(2) of the Constitution*²⁶ that the notion of ‘law in force in Kazakhstan’ means not only the Constitution and laws but also ‘international obligations of the Republic’.

The Moldovan Constitutional Court frequently relies on international law. For example, the *Case Concerning the Land Code*²⁷ involved restrictions on the private ownership of land. The Court found the challenged restrictions unconstitutional by referring, among other things, to Article 17 of the Universal Declaration of Human Rights. The *Case Concerning Articles 10 and 16 of the Law on Meetings*²⁸ concerned restrictions on the right of assembly imposed on foreign citizens and stateless persons. The Court found that these restrictions contravened ‘rules of international acts’ and cited Article 21 of the Covenant on Civil and Political Rights (ratified by Moldova in 1990) and Article 16 of the European Convention of Human Rights (not ratified by Moldova at the time the decision was rendered in 1996).

The Ukrainian Constitutional Court also relies increasingly on international law. The *Case Concerning Articles 3, 23, 31, 47 and 48 of the Law on Information and Article 12 of the Law on the Procuracy*²⁹ is an important indication of this trend. The case dealt with access to personal data concerning the psychiatric treatment of citizens. It was initiated by a private individual who was registered with a psychiatric clinic, which had divulged information concerning his mental health without his consent. The Constitutional Court noted that national legislation did not establish procedures for protecting confidential data in the sphere of mental health. The Court found that in this respect the Ukrainian legislation failed to meet international standards concerning protection of personal data. In particular, the Court noted that ‘the Ukrainian legislation had not been brought into conformity with the European standards governing the protection of personal information and data’. The Court then referred to the 1977 recommendation of the Parliamentary Assembly of the Council of Europe on the situation of the mentally ill.³⁰

It has been reported that the Constitutional Court in Georgia, in the *Case of Lado Sanikadze and Koba Davitashvili v. The Parliament of Georgia*, made references to the Universal Declaration of Human Rights and international treaties.³¹ In the *Case of 48*

²⁶ *Vestnik Konstitutsionnogo Soveta Respubliki Kazakhstan* (Herald of the Constitutional Council of the Republic of Kazakhstan), 1998, No. 1, at 153.

²⁷ *Respublika Moldova. Konstitutsionii Sud. Shornik postanovlenii I reshenii 1995–1996* (Republic of Moldova, Constitutional Court. Compilation of Opinions and Decisions 1995–1996) (1997) 96.

²⁸ *Ibid.*, at 106.

²⁹ *Visnik Konstituuinogo Sudu Ukraini* (Herald of the Constitutional Court of the Ukraine), 1997, No. 2, at 31.

³⁰ The Parliamentary Assembly’s Recommendation 818 (1977) calls upon states ‘to ensure that the registers kept in psychiatric institutions on ex-patients, or any other documentation on their case, should be considered as a strict medical professional secret’. Council of Europe. *Parliamentary Assembly. Texts Adopted by the Assembly* (1977).

³¹ See Korkelia, ‘New Trends regarding the Relationship between International and National Law (With a Special View towards the States of Eastern Europe)’, 23 *Review of Central and East European Law* (1997) 227, 238.

Members of the Parliament of Georgia v. The Parliament of Georgia,³² which dealt with certain controversial provisions of the Georgian education law, the Constitutional Court held that ‘the constitutional right to education is one of the fundamental social rights and values recognized by civilized nations’. It then referred to the Constitution of Georgia and to ‘international legal acts’, including the Universal Declaration of Human Rights and the Covenant on Economic, Social and Cultural Rights.

No data is available on the implementation of international law in other CIS countries. It appears that these countries, in particular Azerbaijan and all Central Asian states except Kazakhstan, have no jurisprudence concerning the implementation of international law in domestic law.

4 The Significance of Judicial Practice

The cases described above are significant from several points of view. From a broad political-legal perspective, they demonstrate that constitutional provisions on international law in at least some CIS states are not a dead letter. International law can be invoked before the domestic courts in several CIS states.

Judicial practice also indicates that some CIS judges embrace international law even in situations where neither the constitutional provisions nor the general political environment favours the direct application of international standards. Belarus offers an interesting example of this type of approach. As noted earlier, the Constitution of Belarus contains only a fairly vague reference to international law. Furthermore, there are strong indications that the domestic political environment in Belarus hardly encourages the direct application of international law.³³ Yet the judges of the Constitutional Court in this country have made recourse to international law in several cases. While this ‘friendly’ approach to international law on the part of the judges of the Constitutional Court has not changed the general political and legal situation in the country, it has become one of the means to pressure the executive branch to comply with international obligations in the area of human rights.

The lack of judicial practice of applying international law in domestic law contexts in many CIS countries which have proclaimed their adherence to international law reminds us that in societies that lack democratic institutions and the rule of law there is always a discrepancy between constitutional undertakings and their practical application. Several CIS countries, including Azerbaijan and Central Asian states,

³² Judgment of 29 December 1997 (on file with the author. The author would like to thank Veronica Medonidze for the text of the Court’s opinion).

³³ In assessing the domestic situation in Belarus, the Human Rights Committee noted in 1997 that ‘remnants of the former totalitarian rule persist and that the human rights situation in Belarus has deteriorated significantly . . .’ (Concluding Observations of the Human Rights Committee: Belarus, UN Doc. CCPR/C/79/Add. 86 (1997)). The executive branch in Belarus is not willing to recognize the principle of the rule of law. The Human Rights Committee noted in this connection that the President of the Republic failed ‘to respect the decisions of the Constitutional Court and to observe the rule of law’ (*ibid*). For details see Tikhinya, ‘The Legitimate Legislative Branch in the Republic of Belarus’, 4 *Parker School Journal of East European Law* (1997) 363.

have developed neo-authoritarian tendencies³⁴ that render the constitutional provisions on international law irrelevant. It appears that constitutional provisions concerning the application of international law in these countries have no impact on the operation of domestic legal systems.

From a more technical perspective, the judicial practice of CIS states demonstrates that the courts usually rely on international law as an additional argument in support of their conclusions based on the applicable constitutional provisions. As a rule, cases relying on international law concern human rights issues. The approach adopted by the CIS courts is quite understandable in view of the fact that almost all CIS constitutions contain extensive catalogues of human rights based on the generally recognized international human rights standards. These constitutional provisions are then interpreted by domestic courts with the aid of international human rights standards. At the same time, if there is a real gap in domestic law, courts may apply international law directly in order to make up for the deficit.

Judicial practice suggests that the courts of several CIS countries have encountered serious difficulties in clarifying methods to be used for ascertaining applicable international law rules. The practice of the Russian Constitutional Court may provide a useful illustration of the emerging problems of developing domestic techniques of international law-finding. The Russian Constitutional Court often bases its decisions on 'the generally recognized principles and norms of international law'. When dealing with these principles and norms, the Court appears to believe that they may be proved by citing international treaties or even non-binding international instruments, particularly UN General Assembly resolutions. This approach to proving general international law is controversial because it traditionally requires proof of *actual practice* of states accepted as law. For example, in the *Labor Code Case*,³⁵ which dealt with compulsory termination of labour contracts for persons reaching pensionable age, the Court found that the challenged provisions of the Labour Code violated 'the generally recognized principles and rules of international law'. These principles were derived from the Covenant on Economic, Social and Cultural Rights, ILO Convention No. 157 and certain ILO recommendations. The Russian Constitutional Court made no effort to analyse the legislative or other practice of members of the international community on the question of termination of labour relations for persons of retirement age. It is known, however, that many countries have established special procedures for this type of situation. If the Court, instead of being content with references to very general provisions of treaties and recommendations of the ILO, had

³⁴ Neo-authoritarian tendencies inevitably lead to serious abuses of human rights. For example, in assessing the domestic situation in Azerbaijan, the Human Rights Committee established 'a pattern of gross human rights violations'. It noted that 'there have been reports of cases of summary execution, enforced involuntary disappearance, torture and other acts of violence against the person, as well as arbitrary detention'. Concluding Observations of the Human Rights Committee: Azerbaijan UN Doc. CCPR/C/79/Add. 38 (1994).

³⁵ See *supra* note 11.

engaged in an analysis of the actual practice of states in this field, its conclusions would not have been so categorical.³⁶

In view of this trend one may claim that the Russian Constitutional Court has invented its own version of sources of international law for domestic consumption. The Russian Supreme Court appears to be moving in the same direction. The 1995 Ruling of the Supreme Court³⁷ provides that all

[lower] courts shall take into account the generally recognized principles and norms of international law laid down in international covenants, conventions and other documents (particularly in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights).

Under this Ruling all Russian 'ordinary' courts must ascertain 'the generally recognized principles and norms of international law' by simple reference to international conventions or 'other documents'. This approach is similar to that of the Russian Constitutional Court and raises the same objections. Even if one accepts such an approach to ascertaining general international law, not all the examples given by the Supreme Court are entirely persuasive. Many international lawyers would argue, for instance, that the Covenant on Economic, Social and Cultural Rights cannot in itself constitute or generate 'the generally recognized principles and norms of international law'.

Be that as it may, many would agree that the trend towards 'domestication' of the international sources doctrine may lead to undesirable results. Russian and other CIS courts should be advised to follow the recommendation on the matter issued by the *Institut de droit international*. Article 4 of the *Institut's* 1993 resolution on the application of international law by domestic judges provides that

national courts, in determining the content of customary international law, should use *the same techniques as international tribunals* and should enjoy the same freedom to apply rules of customary international law in their current content, taking into account, to the appropriate extent, *developments in the practice of states, jurisprudence and doctrine*.³⁸

It should also be said that the judicial practice of CIS states has also resolved certain controversial areas of law governing the implementation of international law in domestic legal systems. In particular, the courts of several countries have clarified the hierarchical status of different international rules in their domestic law and have begun to develop criteria for defining self-executing and non-self-executing treaties.

³⁶ For a critical commentary on the Russian Constitutional Court's methodology, see Danilenko, 'Primenenie mezhdunarodnogo prava vo vnutrennei pravovoi sisteme Rossii: Praktika Kostitutsionnogo suda' (Implementation of International Law in the Domestic Legal System of Russia: Practice of the Constitutional Court), 11 *Gosudarstvo I pravo* (1995) 115; Lukashuk, 'Primenenie norm mezhdunarodnogo prava v svete Federal'nogo zakona o mezhdunarodnykh dogovorakh Rossii' (Implementation of Rules of International Law in Light of the Federal Law on International Treaties of Russia), 4 *Rossiiskii juridicheskii zhurnal* (1996) 46.

³⁷ See *supra* note 16.

³⁸ 5(II) *Institut de droit international, Annuaire* (1993) 257 (emphasis added).

5 The Hierarchical Status of International Law

As noted earlier, several CIS countries, including Russia, Kazakhstan and Moldova, have established a higher hierarchical status of treaties with respect to contrary domestic laws. However, the constitutions of these countries do not set a higher hierarchical status for the ‘generally recognized international principles and norms of international law’. This has become a particularly controversial topic in Russia. The debate concerns the interpretation of Article 17 of the Russian Constitution, which provides that ‘the rights and freedoms of the human being and citizen shall be recognized and guaranteed in the Russian Federation in conformity with the generally recognized principles and norms of international law’. Some commentators argue that this Article places ‘the generally recognized principles and norms of international law’ concerning human rights above contrary domestic law. They view these generally recognized principles and norms as having the same status as constitutional norms.³⁹ Others contend that, by virtue of Article 17 of the Constitution, ‘international norms are placed ahead of even the Constitution’.⁴⁰ This is a very bold proposition, which to date has not found confirmation in judicial practice. It would appear, as indeed shown by judicial practice, that the Russian Constitutional Court regards the generally recognized principles and norms of human rights as having a higher status than contrary domestic legislation. Thus, in the *Case Concerning Certain Normative Acts of the City of Moscow and Some Other Regions*,⁴¹ the Court declared the local regulations requiring residence permits to be unconstitutional by referring not only to human rights treaties but to the ‘generally recognized principles and norms of international law’. However, there has not been any instance of a decision of the Constitutional Court or of Russian ‘ordinary’ courts allowing general international law to prevail over contrary provisions of the Constitution.

An analysis of the Constitution of Belarus fails to give a definite answer as to the hierarchical status of international law in that country. The opinions of the Constitutional Court⁴² would appear to suggest that both treaties and ‘the generally recognized principles of international law’ enjoy a higher status than contrary domestic law.

³⁹ See I. I. Lukashuk, *Normy mezhdunarodnogo prava v pravovoi sisteme Rossii* (Norms of International Law in the Russian Legal System) (1997) 39–40.

⁴⁰ See V. P. Zvekov and B. I. Osmin (eds), *Kommentarii k federal'nomu zakonu 'O mezhdunarodnykh dogovorakh Rossiiskoi Federatsii'* (Commentary to the Federal Law ‘On International Treaties of the Russian Federation’) (1996) 17. Cf. also W. E. Butler, *The Russian Law of Treaties* (1997) 26. (Article 17 ‘places international law ahead of the Constitution and, in so doing, confers upon international law a special status in the Russian legal system’.)

⁴¹ See *supra* note 13.

⁴² See *supra* notes 23–24 and accompanying text.

6 The Concept of Self-executing Treaties

Some CIS constitutions make a distinction between self-executing and non-self-executing treaties.⁴³ Thus, Article 4 of the 1995 Constitution of Kazakhstan proclaims that 'international treaties ratified by the Republic of Kazakhstan have priority over its laws and are *directly implemented except in cases when the application of an international treaty shall require the promulgation of a law*'.⁴⁴ However, other constitutions do not draw any distinctions between different categories of treaties.

Because CIS domestic tribunals, under the Soviet system, had no experience in applying international treaties, they often fail to realize that vague or broad treaty rules cannot apply directly. An analysis of decisions of the Russian Constitutional Court indicates that it makes no distinction between self-executing and non-self-executing treaties. In the *Labor Code Case*⁴⁵ the Constitutional Court declared age discrimination in labour relations unconstitutional. The Court relied, among other things, on the International Covenant on Economic, Social and Cultural Rights and ILO Convention No. 111. It is unlikely that the courts of the majority of monistic countries would consider these treaties to be self-executing; first, because they are essentially programmatic and, second, because they require the adoption of domestic 'legislative measures'.

While the Russian Constitutional Court refused to draw any distinction between self-executing and non-self-executing treaties, the legislature took the initiative. The 1995 Law on International Treaties⁴⁶ includes Article 5(3), which states that

the provisions of officially published international treaties of the Russian Federation, which do not require the promulgation of domestic acts for application, shall operate in the Russian Federation directly. In order to effectuate other provisions of international treaties of the Russian Federation, the relevant legal acts shall be adopted.

Article 5(3) is based on the idea that, as a matter of principle, two different categories of treaties exist and that certain treaties require legislative acts in the domestic legal system in order to be effective. At the same time, the clause does not tell us much about the characteristics which make a treaty non-self-executing. One point is clear, however: any treaty provision that expressly requires states to adopt legislative measures cannot be considered directly applicable or self-executing.

The 1995 Law on International Treaties was cited by the Russian Supreme Court in its 1995 Ruling⁴⁷ concerning the application of international law. The Supreme Court ruled that

the courts shall bear in mind that, according to Article 5(3) of the Federal Law on International Treaties of the Russian Federation, the provisions of officially published international treaties of

⁴³ For the doctrine of self-executing treaties, see generally Iwasawa, 'The Doctrine of Self-Executing Treaties in the United States: A Critical Analysis', 26 *Virginia Journal of International Law* (1986) 627; Buergenthal, 'Self-Executing and Non-Self-Executing Treaties in National and International Law', 235 *RdC* (1992, IV) 303.

⁴⁴ Emphasis added.

⁴⁵ See *supra* note 11.

⁴⁶ *Sobranie*, No. 29, item 2757 (1995).

⁴⁷ See *supra* note 16.

the Russian Federation that do not require the promulgation of domestic acts for application, shall operate in the Russian Federation directly. In other cases it is necessary to apply, along with the international treaty of the Russian Federation, the relevant domestic legal act that was enacted for effectuating the provisions of the said international treaty.

While the Supreme Court's attempt to distinguish between self-executing and non-self-executing treaties is commendable, it may however have created even more confusion by requiring *simultaneous* application of domestic laws and underlying non-self-executing treaties. It is not entirely clear whether such a simultaneous application is feasible.

7 Participation in International Institutions

Experience suggests that participation in international institutions is an important factor favouring the direct application of treaties. If a country joins an international institution to which aggrieved individuals may appeal in cases of breach of treaty obligations on the domestic level, national authorities tend to take those treaty obligations seriously.⁴⁸ It is well known, for example, that the jurisprudence of the European Court of Human Rights exerts a strong influence over the attitude of domestic courts in member states of the Council of Europe. As domestic authorities, including judges, began to realize that the European Court is emerging as a kind of Pan-European constitutional court, they began to pay much closer attention to the European Convention on Human Rights and to the case law of the European Court of Human Rights. As a result, there is much greater willingness to apply the European Convention directly.

From this perspective, one may wonder whether membership in the CIS affects the domestic implementation of international law in the CIS states. The CIS Charter⁴⁹ envisions a multi-purpose regional organization based on the quite close cooperation of its members in political, military, economic, social and cultural spheres. It also establishes the governance structure of the organization, which includes the Council of Heads of State, the Council of Heads of Government, the Council of Ministers of Foreign Affairs, the Council of Ministers of Defence, the Coordination and Consultative Committee (executive organ), the Economic Court, the Commission on Human Rights and the Inter-Parliamentary Assembly.⁵⁰

The growth and development of the CIS as a regional organization has been accompanied by the adoption of numerous additional agreements establishing different levels of integration between the participating states. The most important

⁴⁸ Cf. Buergenthal, *supra* note 43, at 384, 394.

⁴⁹ See the text in 34 *ILM* (1995) 1279.

⁵⁰ For details concerning the structure and powers of the CIS, see Fisenko and Fisenko, 'The Charter of Cooperation', 4 *Finnish Yearbook of International Law* (1993) 229; Voitovich, 'The Commonwealth of Independent States: An Emerging Institutional Model', 4 *EJIL* (1993) 403; Pechota, 'The Commonwealth of Independent States: A Legal Profile', 2 *Parker School Journal of East European Law* (1995) 583.

among these is the 1993 Treaty on Creation of an Economic Union.⁵¹ This Treaty calls for the progressive establishment of a free trade association, a customs union, a common market for goods, services, capital and labour, and a monetary union. It expressly provides for the supremacy of this Treaty. Article 25 of the 1993 Treaty states: 'If the present Treaty contains norms and rules other than those provided by national legislation, the rules and norms of international law and the present Treaty shall be applied.'

However, the CIS has no effective mechanism to implement this far-reaching provision. The CIS remains a fairly loose organization of states. It has a major weakness as a result of the decision of the participating states to adopt the model of multi-speed and multi-option integration. This arrangement allows individual members to choose the level and pace of integration into the existing CIS structures. As a result, the CIS lacks a fully integrated judicial organ capable of resolving disputes among all members of the organization. The CIS Charter envisages an Economic Court of the CIS. However, the 1992 Statute of the Economic Court⁵² is not an integral part of the CIS Charter. CIS members are not *ipso facto* parties to the Statute of the Economic Court. Indeed, only some CIS states became parties to the 1992 Statute.⁵³ The Economic Court has been granted jurisdiction over 'interstate economic disputes', including those concerning 'the conformity of normative and other acts of member states of the Commonwealth on economic issues with the agreements and other acts of the Commonwealth'.⁵⁴ However, the jurisprudence and actual impact of the Economic Court on the operation of the domestic legal systems of CIS states remains marginal. By 1998 the Economic Court had decided only a handful of disputes, none of which concerned 'the conformity of normative and other acts of member states of the Commonwealth on economic issues with the agreements and other acts of the Commonwealth'.

Similarly, attempts to establish a new regional human rights system within the CIS on the basis of the CIS Convention on Fundamental Rights and Freedoms⁵⁵ have not resulted in the development of a strong enforcement mechanism. The CIS Convention contemplates the establishment of the CIS Human Rights Commission, whose task will be to monitor enforcement of the Convention. Regulations on the Human Rights Commission⁵⁶ provide that the Commission may 'examine individual and collective applications submitted by any person or non-governmental organization concerning matters connected with human rights violations by any of the parties'. However, the Human Rights Commission has been granted only limited powers and its opinions are

⁵¹ For an English translation, see 34 *ILM* (1995) 1298. The 1993 Treaty on Creation of an Economic Union has been ratified by Armenia, Belarus, Georgia, Kazakhstan, Kirghistan, Moldova, Russia, Tadjikistan, Turkmenistan and Uzbekistan, which became members of the emerging Economic Union. Ukraine became an associate member of the Economic Union.

⁵² The text of the 1992 Statute of the Economic Court of the CIS is published in *Sodruzhestvo. Informatsionii vestnik* (Commonwealth. Information Bulletin), 1992, No. 6, at 54.

⁵³ These include Armenia, Belarus, Kazakhstan, Kirghistan, Moldova, Russia, Tadjikistan and Uzbekistan.

⁵⁴ 1992 Statute of the Economic Court of the CIS, Article 3.

⁵⁵ For an English language text of the CIS Convention on Human Rights, see 17 *HRLJ* (1996) 159.

⁵⁶ See *ibid.*, at 163.

not legally binding. It is unlikely that this new regional human rights organ will be able to ensure successful transnational protection of human rights and thus have an effect on the domestic implementation of international human rights standards.

Moldova, Russia and Ukraine have joined the Council of Europe, ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and recognized the jurisdiction of the European Court of Human Rights. One can expect that the interaction between Moldovan, Russian and Ukrainian domestic courts and the European Court of Human Rights will have a particularly significant impact on the direct domestic application of human rights treaties in these countries.

With respect to Russia, it may be appropriate to mention here that under Article 15(4) of the 1993 Constitution it is possible not only to invoke rules of treaties before domestic courts but also to rely on the interpretation of such treaties by international organs. Consequently, given that Russia has ratified the European Convention on Human Rights, there is no bar to the domestic use of the interpretation of the Convention advanced by the European Court of Human Rights. The case law of the European Court may thus be gradually transformed into Russian domestic jurisprudence.

Implementation of the decisions of the European Court of Human Rights may be facilitated by the ruling of the Russian Constitutional Court in the *Case Concerning Articles 371, 374 and 384 of the Criminal Procedure Code*.⁵⁷ The Constitutional Court held that

decisions of inter-state organs [concerned with the protection of human rights and freedoms] may lead to the reconsideration of specific cases by the highest courts of the Russian Federation and, consequently, establish their competence with respect to the institution of new proceedings aimed at changing the previously rendered decisions, including decisions handed down by the highest domestic judicial instance.

The Constitutional Court made this important pronouncement in connection with Article 46 of the Russian Constitution, which provides that all persons enjoy a constitutionally protected right, having exhausted domestic remedies, to submit petitions to 'inter-state organs concerned with the protection of human rights and freedoms'. Although the Russian legislature has yet to adopt new procedural codes that would add a new ground for reopening proceedings with express reference to the findings of international organs,⁵⁸ this innovative interpretation of Article 46 advanced by the Constitutional Court has established an obligation to give direct domestic effect to decisions of international human rights bodies, including the European Court of Human Rights.

⁵⁷ *VKS*, 1996, No. 2, at 2.

⁵⁸ Under the existing Criminal Procedure Code, it is possible to request the review of a conviction, following a finding by international organs, by reference to a 'new circumstance' or a breach of 'the law', a formula which may include violations of international law. Similar considerations may be invoked in civil cases.

8 Practical Problems

A number of purely practical problems may impede reliance on international law in domestic legal systems. Firstly, there is an acute lack of translations of international treaties and decisions of international organs, especially courts, in local law libraries. Many libraries in the CIS region do not have even the most important texts of international treaties and decisions of international institutions. Secondly, lawyers and judges continue to have inadequate training in international law. In many CIS countries, international law, especially international human rights law, is not included in the core curricula of the legal education and practical training of lawyers and judges.

Special problems in this area arise with respect to those Eastern European members of the CIS which have recently joined the Council of Europe. These countries will be able to incorporate the case law of the European Court of Human Rights only if local attorneys and judges have access to translations of the relevant decisions. Although translations of some decisions of the European Court of Human Rights have been published in Russian, Moldovan and Ukrainian,⁵⁹ additional efforts need to be made by these countries, in cooperation with the Council of Europe, to translate all important decisions of the European Court of Human Rights and to make them available to practising lawyers and judges.

9 Concluding Remarks

All the new constitutions of the CIS states contain express references to international law. Many CIS states adopted constitutional clauses declaring international law to be part of the law of the land. Several proclaimed the supremacy of international treaties over contrary domestic legislation. However, a broader 'opening' of the domestic legal orders of these countries to international law has not always been transformed into reality. An analysis of the available judicial practice of the CIS countries indicates that only some of them take constitutional clauses concerning international law seriously. Constitutional provisions on international law seem to be largely irrelevant in those CIS countries which have developed neo-authoritarian tendencies. These countries include Azerbaijan, Belarus and Central Asian states. The absence of judicial practice incorporating international law in Azerbaijan and Central Asian states and instances of non-compliance with judicial rulings in Belarus confirm once again that democratic institutions and a rule of law are essential preconditions for the effective implementation of constitutional principles proclaiming international law to be part of the law of the land.

⁵⁹ See, for example, *Praktika Evropeits'kogo Sudu z prav ludini* (Practice of the European Court of Human Rights) (a Ukrainian periodical published since 1997).