

**Постоянное представительство  
Российской Федерации  
при Организации  
Объединенных Наций**



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Attachment

The Permanent Mission of the Russian Federation to the United Nations presents its compliments to the Secretariat of the United Nations and pursuant to paragraph 4 (c) of General Assembly resolution 74/186 entitled “Report of the International Law Commission on the work of its seventy-first session” has the honour to transmit to the Secretariat information on practice of the Russian Federation relating to the topic “General principles of law”.

The Permanent Mission of the Russian Federation avails itself of the opportunity to renew to the Secretariat of the United Nations the assurances of its highest consideration.

New York, “19” February 2020



Secretariat  
of the United Nations  
New York

*Translated from Russian where indicated*

**Practice of the Russian Federation relating to General Principles of Law**

Moscow

2020

## I. Introductory Note

1. The International Law Commission (ILC) requested States to provide information on their practice relating to general principles of law, in the sense of Article 38, paragraph 1 (c), of the Statute of the International Court of Justice, including as set out in:

- (a) decisions of national courts, legislation and any other relevant practice at the domestic level;
- (b) pleadings before international courts and tribunals;
- (c) statements made in international organizations, international conferences and other forums; and
- (d) treaty practice.<sup>1</sup>

## II. Practice of the Russian Federation relating to General Principles of Law<sup>2</sup>

2. This section includes references to and short description of documents/materials referring to practice of the Russian Federation relating to general principles of law. Documents are structured according to ILC's request to States in UN Doc. A/74/10 (see **para. 1**) and listed under two subsections – those referring in their text: (i) to “*general principles of law*” or “*general legal principles*” and (ii) “*principles*”. Excerpts of the most relevant parts of the materials used in this study are displayed hereto.

### a) Decisions of national courts, legislation and any other relevant practice at the domestic level

#### (i) *General Principles of Law / General Legal Principles*

3. Judgment of the Constitutional Court of the Russian Federation of February 18, 2019, No. 11-P (finding that presumption of innocence and *mens rea* as a constitutive element of any offence “*express general principles of law applicable to law enforcement in the area of public liability not only in criminal law but also in administrative law*”):

[*Translated from Russian:*]

“Within the meaning of articles 49, 50, 52, 54 and 64 of the Constitution of the Russian Federation, the principle of presumption of innocence and the principle of fault-based responsibility, i.e., fault is a necessary constituent element of any offence (and, consequently, grounds for criminal prosecution), are general principles of law applicable to State coercive measures in the area of public liability not only in criminal law but also in administrative law.”<sup>3</sup>

<sup>1</sup> UN Doc. A/74/10, para. 30. URL: <https://undocs.org/en/A/74/10>.

<sup>2</sup> It is not considered here whether a reference to general principles of law or principles is made in the sense of Article 38, paragraph 1 (c), of the ICJ Statute.

<sup>3</sup> URL: <http://doc.ksrf.ru/decision/KSRFDecision384265.pdf> (p. 5).

4. Judgment of the Constitutional Court of the Russian Federation of March 21, 2013, No. 6-P (considering *non bis in idem* to be a “*general legal principle*” that applies beyond criminal liability):

[*Translated from Russian:*]

“According to article 50 (part 1) of the Constitution of the Russian Federation, no person may be convicted of the same crime twice. This rule, in its literal sense, applies to cases involving criminal prosecution, which should not be taken to mean that the Constitution of the Russian Federation permits administrative or disciplinary proceedings to be instituted repeatedly for the same act. A constitutional ban, which reflects the general legal principle *non bis in idem*, is aimed at ensuring legal security and legal certainty and stability, as affirmed by the Constitutional Court of the Russian Federation in its Order No. 5-P of 11 May 2005. Legal liability is, in essence, a kind of reaction to a specific offence aimed at eliminating or mitigating the consequences of the offence or punishing the offender, as well as at preventing new offences. Instituting proceedings repeatedly against a person for the same type of liability and for the same act would imply holding that person liable in the absence of an offence, which is inadmissible in a State governed by the rule of law, and conflicts with the aforementioned general legal principle”.<sup>4</sup>

5. Decision of the Economic Cases Chamber of the Supreme Court of the Russian Federation of 24 December 2019, No. 302-EC19-17595 (relying on equity as a “general principle of law”):

[*Translated from Russian:*]

“In the light of the above, the findings of the courts on the legality of the directive of the oversight service are based on an incorrect interpretation of the housing code and general principles of law, including the principle of equity, which in this case provides for the right of the person, in this case the managing organization, which has been conscientious in fulfilling its obligations in the management of a multi-unit building, to require an appropriate payment from the owners (occupants) of the premises.”<sup>5</sup>

6. Judgment of the Constitutional Court of the Russian Federation of February 11, 2019, No. 9-P (holding that the “*general legal principle of equity*” prevents one participant to the expropriation proceedings from receiving “unfair economic advantage” at the expense of another participant):

[*Translated from Russian:*]

“At the same time, federal legislators, within the limits of discretion granted to them under article 71, paragraph (p), of the Constitution of the Russian Federation, and in view of the need to strike a balance between private and public interests in regulating matters arising from the necessary expropriation of real estate to meet the needs of the State or the

<sup>4</sup> URL: <http://doc.ksrf.ru/decision/KSRFDecision126013.pdf> (p. 18).

<sup>5</sup> URL: [http://vsrf.ru/stor\\_pdf\\_ec.php?id=1847486](http://vsrf.ru/stor_pdf_ec.php?id=1847486) (p. 8).

municipality, has the right to choose how the valuation date of the expropriated property is determined. Regardless, taking into consideration the general legal principle of equity, such regulation must not give one of the parties to a matter arising from the expropriation of property an unfair economic advantage over another party and should require that any objective factors affecting the property's market value are taken into consideration.”<sup>6</sup>

7. Judgment of the Constitutional Court of the Russian Federation of March 5, 2019, No. 14-P (relying on the “general legal principle of equity”):

*[Translated from Russian:]*

“By virtue of articles 15 (part 2), 17 (part 3), 19 (part 1 and 2) and 55 (part 1 and 3) of the Constitution of the Russian Federation, and on the basis of the general legal principle of equity governing property relations, which are based on equality, autonomous will and financial independence of their participants, the protection of the right to property and other property rights, including liens, should be granted with due regard to the principle of proportionality in order to ensure the balance of rights and legal interests of the participants in civil commerce, whether they are owners, creditors or debtors.”<sup>7</sup>

8. Judgment of the Constitutional Court of the Russian Federation of April 11, 2019, No. 17-P (relying on “general legal principles of equality before the law and equity”):

*[Translated from Russian:]*

“This would result in disproportionate restrictions being placed on the labour rights of workers who are called on to work under conditions that deviate from the norm and would conflict with general legal principles of legal equality and justice, arising from article 19 (part 2) of the Constitution of the Russian Federation, which require, among other things, that reasonable differentiation be made between subjects in different situations and which oblige the State to regulate the remuneration of labour to ensure that wages for all workers are fair and based on objective criteria and identical rules are not applied to workers in different situations.”<sup>8</sup>

9. Judgment of the Constitutional Court of the Russian Federation of May 28, 2019, No. 21-P (relying on “general legal principles of equality before the law and equity”):

*[Translated from Russian:]*

“A different interpretation of the relevant statutory regulation would not take into account the special purpose of hunting as a means of ensuring the traditional way of life and the conduct of traditional economic activity, thereby violating the rights of small indigenous minorities of the North, Siberia and the Far East of the Russian Federation as

<sup>6</sup> URL: <http://doc.ksrf.ru/decision/KSRFDecision382419.pdf> (pp. 8-9).

<sup>7</sup> URL: <http://doc.ksrf.ru/decision/KSRFDecision387985.pdf> (p. 10).

<sup>8</sup> URL: <http://doc.ksrf.ru/decision/KSRFDecision396664.pdf> (p. 13).

guaranteed by the Constitution of the Russian Federation, namely articles 1 (part 1), 7 (part 1), 9 (part 1), 19 and 34 (part 1) and article 55 (part 3); it would also contradict general legal principles of equality before the law and equity in that it would give unequal status to persons belonging to the same category with respect to their ability to lead a traditional way of life and engage in traditional economic activity as an indispensable element of their special legal status, as recognized and protected in the Constitution of the Russian Federation (article 69).<sup>9</sup>

10. Judgment of the Constitutional Court of the Russian Federation of December 16, 2019, No. 40-P (relying on “*general legal principles of equality before the law and equity*”):

[*Translated from Russian:*]

“This would result in disproportionate restrictions being placed on the labour rights of workers who have agreed to work under conditions that deviate from the norm and would conflict with general legal principles of legal equality and justice, arising from article 19 (part 2) of the Constitution of the Russian Federation, which require, among other things, that reasonable differentiation be made between subjects in different situations and which oblige the State to regulate the remuneration of labour such that wages for all workers are fair and based on objective criteria and identical rules are not applied to workers in different situations.”<sup>10</sup>

11. Judgment of the Constitutional Court of the Russian Federation of May 22, 2019, No. 20-P (relying on the “*general legal principle lex specialis derogat generali*”):

[*Translated from Russian:*]

“...part two of article 325 of the Code of Criminal Procedure of the Russian Federation has as its basis the right to trial in a court of law with the participation of a jury, as provided under article 47 (part 2) of the Constitution of the Russian Federation, and is aimed at regulating relations in a special sphere of statutory regulation; and, within its constitutional and legal meaning within the system of norms of the law of criminal procedure, it acts as a special norm in relation to the general provisions of the Code of Personal Jurisdiction in relation to juvenile offenders, and thus takes precedence where it conflicts with such provisions, in accordance with the general legal principle *lex specialis derogat generali*, which defines the criteria for determining whether the general or the special norm governing the same social relations applies.”<sup>11</sup>

12. Decision of the Constitutional Court of the Russian Federation of October 5, 2000, No. 199-O (relying on *lex posterior derogat legi priori* as the “*general principle of law*”):

<sup>9</sup> URL: <http://doc.ksrf.ru/decision/KSRFDecision404451.pdf> (p. 13).

<sup>10</sup> URL: <http://doc.ksrf.ru/decision/KSRFDecision443889.pdf> (p. 12).

<sup>11</sup> URL: <http://doc.ksrf.ru/decision/KSRFDecision403355.pdf> (p. 10).

[*Translated from Russian:*]

“... in accordance with general principles of law, in the event of a conflict of norms governing the same social relations, the norms of a law adopted at the later date shall apply, provided that it is not stipulated otherwise in the law, with special norms taking precedence over general norms...”<sup>12</sup>

13. Judgment of the Constitutional Court of the Russian Federation of December 11, 2014, No. 32-P (finding the *nullum crimen, nulla poena sine lege* principle to be one of the “*general legal principles in the sphere of criminal law regulation*”):

[*Translated from Russian:*]

“The Constitution of the Russian Federation entrusts federal legislators with the establishment ... of measures to protect property from criminal trespass and grants them ample discretion, while also obliging them to be guided by the general principles of legal responsibility, including the principles of equality before the law and legal certainty, as well as the principle of *nullum crimen, nulla poena sine lege* (no crime and no punishment without law), which are of universal importance and inherently relate to the foundations of the constitutional order, and which are enshrined in articles 19 (part 1) and 54 (part 2) of the Constitution of the Russian Federation.”<sup>13</sup>

14. Judgment of the Constitutional Court of the Russian Federation of July 9, 2019, No. 27-P (applying “*general legal principles*” of legal liability, including the principle of *lex mitior*, to tax offences):

[*Translated from Russian:*]

“In accordance with article 57 of the Constitution of the Russian Federation, every person shall pay legally established taxes and duties. To this end, in accordance with articles 71 (paragraphs (c), (h), (i) and (p)), 72 (paragraphs (b) and (j), part 1), 75 (part 3) and 76 (parts 1 and 2) of the Constitution of the Russian Federation, legislators shall define the general principles of taxation and the system of taxes collected for the budget, and also, taking into account the requirements of article 55 (part 3) and the principles of legal liability, including fairness, inevitability and the relative danger to society posed by the act committed, provide for coercive measures that ensure compliance with the aforementioned constitutional obligations (Decision of the Constitutional Court of the Russian Federation of 8 December 2017, No. 39-P).

Pursuant to the same general legal principles, in accordance with article 54 of the Constitution of the Russian Federation, a law in accordance with which liability is established or aggravating factors are determined shall not have retroactive force; no

<sup>12</sup> URL: <http://doc.ksrf.ru/decision/KSRFDecision33413.pdf> (p. 2).

<sup>13</sup> URL: <http://doc.ksrf.ru/decision/KSRFDecision181691.pdf> (p.6).

person may be held liable for actions that had not been criminalized at the time of their commission; if liability for an offence is eliminated or mitigated after an offence has been committed, the new law shall apply. These rules, as has been emphasized repeatedly by the Constitutional Court of the Russian Federation, have universal significance for all types of legal liability and are binding both on legislators and law enforcement bodies, including the courts”.<sup>14</sup>

15. Decision of the Constitutional Court of the Russian Federation of February 7, 2013, No. 250-O (relying on “*general legal principles of legality, adequacy and proportionality*”):

[*Translated from Russian:*]

“Within the meaning of the aforementioned norms, and in view of the requirement that general legal principles of legality, adequacy and proportionality apply to State coercive measures, in the context of separate criminal proceedings instituted with respect to an accused party who absconded during an investigation, the file for the separate case must include the originals or copies of the procedural documents certifying the application of procedural coercive measures to the accused in connection with the criminal proceedings, including the seizure of any property to ensure the performance of a judgment in a civil suit involving the accused. Consequently, the seizure of property, like any other procedural coercive measure, shall be selected, applied or rescinded only within the context of a specific criminal case; therefore, separation of the latter from the primary criminal case or merger with another criminal case should not in itself affect the legal regime of the measure in question. A different interpretation would effectively entail substituting proceedings in one criminal case with proceedings in another criminal case and the derogation of procedural guarantees relating to the application of compulsory procedural measures, in particular, the seizure of property.”<sup>15</sup>

16. Review of case law of the Supreme Court of the Russian Federation No. 1 (2019) (adopted by the Presidium of the Supreme Court of the Russian Federation on 24 April 2019) (referring to the “*general legal principle*” of non-retroactivity of laws):

[*Translated from Russian:*]

“Article 6, part 1, of the Housing Code of the Russian Federation affirms the general legal principle relating to the legal effect of legislation over time: a piece of housing legislation has no retroactive force and shall be applicable only to housing relations that arose after it came into effect”.<sup>16</sup>

17. Ruling of the Presidium of the Supreme Commercial Court of the Russian Federation of December 8, 2009, No. 12523/09 in case No. A40-18740/09-69-214 (with reference to the “*general*

<sup>14</sup> URL: <http://doc.ksrf.ru/decision/KSRFDecision413954.pdf> (p. 5).

<sup>15</sup> URL: <http://doc.ksrf.ru/decision/KSRFDecision125765.pdf> (p. 9).

<sup>16</sup> URL: <http://www.supcourt.ru/documents/practice/27769/> (p. 17).



*legal principle*” of *res judicata* and the case law of the Constitutional Court, the Court denied enforcement of an arbitral award that would have effectively overturned the attachment of property pursuant to a final court decision):

[*Translated from Russian:*]

“Court rulings handed down by ordinary courts and arbitral tribunals are enforceable because they have binding effect on all persons throughout the Russian Federation, as expressly set out in the relevant provisions of the Code of Civil Procedure of the Russian Federation (article 13) and the Code of Arbitral Procedure of the Russian Federation (article 16).

The contested ruling of the appellate court violates the general legal principle that court rulings have binding effect. Giving effect to this court ruling runs counter to the public policy of the Russian Federation, as it violates the injunction against disposing of seized property by obtaining the writ of execution from a commercial court to enforce a decision of an arbitration court made in the absence of a dispute between the parties to the arbitration proceedings”.<sup>17</sup>

18. Judgment of the Constitutional Court of the Russian Federation of February 13, 2018, No. 8-P (holding good faith and non-abuse of rights to be “*general legal principles of enjoyment of rights and freedoms*”):

[*Translated from Russian:*]

“With respect to intellectual rights, including the exclusive right to a trademark or service mark, this refers to the obligation of the owner to comply with general legal principles in the enjoyment of associated rights and freedoms, including by demonstrating good faith in their exercise and precluding their abuse.”<sup>18</sup>

**b) Pleadings before international courts and tribunals**

**(i) General Principles of Law / General Legal Principles**

19. Permanent Court of Arbitration, *Yukos Universal Limited (Isle of Man) v. The Russian Federation*, Case No. 2005-04/AA227, Final Award, July 18, 2014, para. 1315 (also reproduced verbatim in *Veteran Petroleum Limited (Cyprus) v. The Russian Federation*, Case No. 2005-05/AA228, Final Award, July 18, 2014;<sup>19</sup> *Hulley Enterprises Limited (Cyprus) v. The Russian Federation*, Case No. 2005-03/AA226, Final Award, 18 July 2014) (arguing by reference to “clean hands” as a “*general principle of law within the meaning of Article 38(1)(c) of the ICJ Statute*”):<sup>20</sup>

<sup>17</sup> URL: [https://ras.arbitr.ru/Document/Pdf/e8f59dad-9c77-4919-8f3a-ccff9f8c6c40/af90d81b-2dae-41de-adc4-59c5763b91d9/A40-18740-2009\\_\\_20091208.pdf?isAddStamp=True](https://ras.arbitr.ru/Document/Pdf/e8f59dad-9c77-4919-8f3a-ccff9f8c6c40/af90d81b-2dae-41de-adc4-59c5763b91d9/A40-18740-2009__20091208.pdf?isAddStamp=True) (p. 8-9).

<sup>18</sup> URL: <http://doc.ksrf.ru/decision/KSRFDecision315752.pdf> (p. 9).

<sup>19</sup> URL: <https://pcacases.com/web/sendAttach/422>.

<sup>20</sup> URL: <https://pcacases.com/web/sendAttach/418>.

“1315. Second, Respondent argues that a claimant who is guilty of illegal conduct is deprived of the necessary *ius standi* to complain of corresponding illegalities by the State. This requirement of “clean hands,” argues Respondent, is a “general principle of law” within the meaning of Article 38(1)(c) of the ICJ Statute. ... Respondent submits that the “unclean hands principle has [an even] greater role with respect to claims brought directly by private parties, including in investor-State arbitration, than in the context of diplomatic protection.””<sup>21</sup>

## (ii) Principles

20. European Court of Human Rights [GC], Judgment (Just Satisfaction) in the case of *Georgia v. Russia (I)*, No. 13255/07, January 31, 2019, para. 42 (arguing that assigning the function of identification of individual victims to the applicant Government would amount to a “flagrant breach of the principle of a fair trial and equality of arms”):

“42. In the respondent Government’s submission, identification of the victims of violations of the Convention was a fact-finding exercise and fell within the exclusive power of the Court. Assigning that function to the applicant Government (even under the supervision of the Committee of Ministers) or directly to the Committee of Ministers, in the absence of adversarial proceedings before the Court, amounted to a flagrant breach of the principle of a fair trial and equality of arms.”<sup>22</sup>

21. Permanent Court of Arbitration, Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait (Ukraine v. the Russian Federation), Case No. 2017-06, Preliminary Objections of the Russian Federation, May 19, 2018, para. 211 (challenging jurisdiction of an UNCLOS Annex VII arbitral tribunal by reference to the priority of an UNCLOS Annex VIII arbitral tribunal in accordance with the principle of *lex specialis*):

“211. The precedence which must be given to special tribunals constituted in accordance with Annex VIII over the general jurisdiction conferred upon Annex VII tribunals is further supported by the principle of *lex specialis* as applied by international courts and tribunals.”<sup>23</sup>

## d) Treaty practice

### (i) *General Principles of Law / General Legal Principles*

22. Agreement between the Government of the Russian Federation and the United Nations Development Programme of November 17, 1993, Art. XI, para. 3 (referring to rights or remedies available to UNDP under “*general principles of law*”):

<sup>21</sup> URL: <https://pcacases.com/web/sendAttach/420>.

<sup>22</sup> URL: <http://hudoc.echr.coe.int/eng?i=001-189019>.

<sup>23</sup> URL: <https://pcacases.com/web/sendAttach/2617>

[*Translated from Russian:*]

“Article XI. Suspension or termination of assistance

[...] 3. The provisions of this Article shall be without prejudice to any other rights or remedies which the UNDP may have in the circumstances, whether under general principles of law or otherwise.”<sup>24</sup>

23. Agreement between the Government of the Russian Federation and the Government of the United Arab Emirates on the promotion and reciprocal protection of investments, June 28, 2010, Art. 11 (referring to “*general principles of law commonly recognized by both Contracting Parties*” as sources of rights and obligations):

“Article 11

Application of other Rules and Special Commitments

Where a matter is governed simultaneously both by this Agreement and general principles of law commonly recognized by both Contracting Parties or legislation of the Contracting Party in the territory of which the investments were made, nothing in this Agreement shall prevent either Contracting Party or any of its investors who made investments in the territory of the other Contracting Party from taking advantage of whichever rules are more favourable for the investor.”<sup>25</sup>

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<sup>24</sup> URL: <http://base.garant.ru/2560484/>

<sup>25</sup> URL: [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_154504/](http://www.consultant.ru/document/cons_doc_LAW_154504/)