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ПРАВО И МЕЖДУНАРОДНЫЕ  
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COMPETENCE OF AND STANDING IN THE COURT OF THE EURASIAN  
ECONOMIC UNION ON THE ISSUES OF PROTECTION  
OF CONTRACTUAL RELATIONS

© 2020 Zh. N. Baishev<sup>1, \*</sup>, R. Zh. Baishev<sup>2, \*\*</sup>

<sup>1</sup> Court of the Eurasian Economic Union, Republic of Belarus, Minsk

<sup>2</sup> Almaty Municipal Court, Republic of Kazakhstan

\*E-mail: [info@courteurasian.org](mailto:info@courteurasian.org)

\*\*E-mail: [aselbai82@mail.ru](mailto:aselbai82@mail.ru)

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**Abstract.** The Eurasian Economic Union has been established by the Treaty on the Eurasian Economic Union dated May 29, 2014. Whereas the Union, a recent regional international integration, is being still on the way of its formation and further development, the issues considered in the present paper are of certain relevance and demand. The subject of this study is the Court of the Eurasian Economic Union, one of the permanent bodies of the EAEU, its competence, as well as standing of entities and persons in the Court on the issues of protection of contractual relations. This paper provides a description on procedures for Judges' appointment, standing of entities and persons in the Court and competence of the Court and cites cases heard at the Court. The novelty of the publication lies in the fact that current studies in this area are mainly fragmentary and cover only certain aspects of the activity and competence of the Court, while the comprehensive study of the provision of the EAEU law, including protection of economic legal relations is really crucial.

**Key words:** Eurasian Economic Union, EAEU Court, jurisdiction of the EAEU Court, standing of persons in the EAEU Court, economic entity, case law of the EAEU Court.

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### Introduction

The Eurasian Economic Union is an international organization of regional economic integration with international legal personality established by the Treaty on the Eurasian Economic Union signed in Astana, Kazakhstan on May 29, 2014<sup>1</sup>. The regional economic integration includes following Member States of the Eurasian Economic Union: Republic of Armenia (since January 2, 2015), Republic of Belarus (since January 1, 2015), Republic of Kazakhstan (since January 1, 2015), Kyrgyz Republic (since August 12, 2015) and Russian Federation (since January 1, 2015)<sup>2</sup>. Besides, the Republic of Moldova has the status of

the observer state (since May 14, 2018)<sup>3</sup>. The Eurasian Economic Union covers an area of 20 million sq. km., which is 14 percent of the global terrain, and the population of approximately 183 million. The Eurasian Economic Union within its territory provides freedom of movement of goods, services, capital and labour, as well as implementation of the coordinated and uniform policy in various economic sectors in the framework of its obligations. In accordance with the provisions of the Treaty on the Eurasian Economic Union, the Court of the Union, which is a permanent judicial body of the Union, established within the frame of regional integration<sup>4</sup>. The seat of the Court is defined to be

<sup>1</sup> See: The Treaty on the Eurasian Economic Union dated May 29, 2014 // Official Internet portal of legal information. URL: <http://pravo.gov.ru> (accessed: 21.10.2019).

<sup>2</sup> See: Agreement on the Accession of the Republic of Armenia to the Treaty on the Eurasian Economic Union dated May 29, 2014, Agreement on the Accession of the Kyrgyz Republic to the Treaty on the Eurasian Economic Union dated May 29, 2014 // Official website of the Court of the Eurasian Economic Union. URL: <http://courteurasian.org> (accessed: 21.10.2019).

<sup>3</sup> See: Overall results of the Supreme Eurasian Economic Council: Moldova has been granted the status of the observer state at the EAEU, members of the Union strengthen basis for sustainable economic development and interaction with third countries, implement digital agenda, expand the single market of services // Official website of the Eurasian Economic Commission. URL: <http://www.eurasiancommission.org/ru/nae/news/Pages/14-05-2018-3.aspx> (accessed: 21.10.2019).

<sup>4</sup> See: First publications on the achievements and several problems in the Court's activity published in legal literature: *Seitimova V. Kh.* On

in Minsk, Republic of Belarus. The purpose of the Court's activity is to ensure uniform application by the Member States and bodies of the Union of the Treaty establishing the Union, international treaties within the Union, international treaties of the Union with a third party and decisions of the bodies of the Union. The Court consists of two Judges from each Member State, i.e. a total of ten Judges, whose term of office is nine years, while the statutory provisions on the Court do not prohibit reappointment of a Judge, whose term has expired. Furthermore, age limit for holding a Judge's position is not determined as well. The Judges are appointed and dismissed by decision of the Supreme Eurasian Economic Council composed of the Presidents of all Member States upon the proposal of the national states.

### Standing of States in the Court

States, legal entities and natural persons have right to submit application to the Court, depending on its competence over the subject matter. Thus, the Court considers disputes arising out of the implementation of the Treaty, international treaties within the Union and (or) decisions of the bodies of the Union on the grounds of Member State's application: 1) on compliance of the international treaty within the Union or individual provisions thereof with the Treaty; 2) on the abidance by another Member State(s) of the Treaty, international treaties within the Union and (or) decisions of the bodies of the Union, as well as certain provisions of these international treaties and (or) decisions; 3) on the compliance of the decision of the Commission or individual provisions thereof with the Treaty, international treaties within the Union and (or) decisions of the bodies of the Union; 4) on challenging actions (failure to act) of the Commission. The Member States are also entitled to apply to the Court for clarification of provisions of the Treaty, international treaties within the Union and decisions of the bodies of the Union. A Member State shall apply to the Court for clarification or for legal proceedings through its authorized bodies and organizations which determined by each Member State and communicated to the Court by diplomatic channels. According to the Diplomatic Note of the Ministry of Foreign Affairs of the Republic of Armenia

No. 111/11461 dated November 3, 2015, the Ministry of Justice of the Republic of Armenia is determined as a body authorized to apply to the Court on behalf of the Republic of Armenia for legal proceedings and clarification<sup>5</sup>. According to the Decree of the President of the Republic of Belarus No. 43 dated January 30, 2015, the Ministry of Justice of the Republic of Belarus is determined as a body authorized to submit application to the Court on behalf of the Republic of Belarus for legal proceedings and clarification. This Decree provides that an application shall be prepared and filed to the Court by the Ministry of Justice of the Republic of Belarus in agreement with the Ministry of Foreign Affairs of the Republic of Belarus. Moreover, the Ministry of Justice of the Republic of Belarus interacts with the Court on other issues within the framework of providing, upon request of the Court, materials necessary for the consideration of the case<sup>6</sup>. In accordance with the Decree of the President of the Republic of Kazakhstan No. 20 dated May 6, 2015, following public authorities are authorized to submit applications to the Court on behalf of the Republic of Kazakhstan for clarification of the provisions of the Treaty, international treaties within the Union and decisions of the bodies of the Union: Prosecutor General's Office of the Republic of Kazakhstan, Ministry of Foreign Affairs of the Republic of Kazakhstan, Ministry of Investment and Development of the Republic of Kazakhstan, Ministry of National Economy of the Republic of Kazakhstan, Ministry of Justice of the Republic of Kazakhstan. In accordance with the provisions of the Decree following public authorities are entitled to apply to the Court on behalf of the Republic of Kazakhstan for consideration of case: Ministry of Foreign Affairs of the Republic of Kazakhstan, Ministry of Investment and Development of the Republic of Kazakhstan, Ministry of National Economy of the Republic of Kazakhstan, Ministry of Justice of the Republic of Kazakhstan, Ministry of Finance of the Republic of Kazakhstan. The Head of the State of the Republic of Kazakhstan stipulated that the National Chamber of Entrepreneurs of the Republic of Kazakhstan as an authorized organization, within its functions determined by the legislative acts of the Republic of Kazakhstan, may apply to the Court for representation and protection of the rights and legitimate interests of economic entities in the manner prescribed by the laws<sup>7</sup>. The Order of the Government of the Kyrgyz Republic No. 394-p dated September 7, 2017 provides that the following bodies are authorized to apply to the Court on behalf of the Kyrgyz Republic for

certain issues of Jurisdiction of the Court of the Eurasian Economic Union // *Eurasian Law Journal*. 2015. No. 7 (86). P. 23, 24; *Sokolova N.A.* Eurasian Integration: Capabilities of the Union' Court // *LEX RUSSICA*. 2015. No. 11. P. 96–103; *Kembaev Zh. M.* Comparative and Legal Analysis of the Functioning of the Court of the Eurasian Economic Union // *International Justice*. 2016. No. 2 (18). P. 30–45; *Ispolinov A.S.* Eurasian Justice: from the Court of Community to the Court of the Union // *State and Law*. 2015. No. 1. P. 80–88; *Tumanyan A.E., Borel Yu. S.* On the Law-Making of the Court of the Eurasian Economic Union // *Eurasian Law Journal*. 2016. No. 10 (101). P. 25–28; *Volova L.I.* Prospects of the Activity of the Court of the Eurasian Economic Union (EAEU) in the Context of Development of Eurasian Integration // *Eurasian Law Journal*. 2017. No. 2. P. 143–147; *Fedortsov A.A.* First Stage in the Establishment and Development of the Court of the Eurasian Economic Union // *Modern Problems of the International and Eurasian Justice, The International scientific and practical conference proceedings* / ed. by Yu. N. Starilov. Issue 10. Voronezh, 2017. No. 10, P. 115–120.

<sup>5</sup> See: Archive of the Court of the Eurasian Economic Union, document No. 5-1-4/229 dated November 10, 2015.

<sup>6</sup> See: The Decree of the President of the Republic of Belarus No. 43 dated January 30, 2015 "On the Measures to Implement the Treaty on the Eurasian Economic Union" // Official Internal portal of legal information. URL: <http://www.pravo.by> (accessed: 21.10.2019).

<sup>7</sup> See: Decree of the President of the Republic of Kazakhstan No. 20 dated May 6, 2015 "On the bodies and organizations authorized to submit applications to the Court of the Eurasian Economic Union" // Electronic Government of the Republic of Kazakhstan. URL: <https://egov.kz> (accessed: 21.10.2019).

dispute settlement and clarification of provisions: Ministry of Justice of the Kyrgyz Republic, Ministry of Foreign Affairs of the Kyrgyz Republic, Ministry of Economy of the Kyrgyz Republic, Ministry of Transport and Roads of the Kyrgyz Republic, Ministry of Finance of the Kyrgyz Republic, Ministry of Agriculture, Food Industry and Land Reclamation of the Kyrgyz Republic, Centre for Judicial Representation of the Government of the Kyrgyz Republic. At the same time, the Centre for Judicial Representation of the Government of the Kyrgyz Republic is determined as coordinating entity for submission of applications of public authorities on behalf of the Kyrgyz Republic to the Court<sup>8</sup>. The Decree of the President of the Russian Federation No. 252 dated May 21, 2015 determined the Ministry of Justice of the Russian Federation as the federal executive authority authorized to apply to the Court on behalf of the Russian Federation for dispute settlement and clarification of provisions<sup>9</sup>. Thus, certain ministries and institutions determined by the Member States itself may apply to the Court on behalf of the Member State. Apart from the Member States, in accordance with subparagraph 10 of paragraph 2 of Article 12 of the Treaty, the Supreme Eurasian Economic Council, which includes the heads of all Member States, is entitled to apply to the Court. However, it should be noted that the statutory and regulatory provisions of the treaties governing activity of the Court do not specify the list of issues, on which such request can be submitted, procedure for the consideration thereof and the act of the Court adopted by the Court based on the results of the consideration thereof<sup>10</sup>. At the same time, the Court, upon an application from the Eurasian Intergovernmental Council, which includes the heads of the governments of all Member States, provides clarification of provisions of the Treaty, international treaties within the Union and decisions of the bodies of the Union by providing an advisory opinion. The Eurasian Economic Commission, which is a permanent regulatory body of the Union, is also entitled to submit application to the Court for clarification of provisions of the Treaty, international treaties within the Union and decisions of the bodies of the Union.

### Standing of Economic Entities in the Court

Enterprises and entrepreneurs have a standing in the Court for the protection of their economic interests. In such case, exhaustion of domestic methods of protecting their rights, including submission of application to national

judicial authorities, is not a prerequisite. The Court considers disputes arising out of the implementation of the Treaty, international treaties within the Union and (or) decisions of the bodies of the Union upon an application of the economic entity: 1) on the compliance of the decision of the Commission or individual provisions thereof directly affecting the rights and legitimate interests of the economic entity in the area of business and other economic activities with the Treaty and (or) international treaties within the Union, if such decision or individual provisions thereof entailed a violation of the rights and legitimate interests of the economic entity granted by the Treaty and (or) international treaties within the Union; 2) on contestation of actions (failure to act) of the Commission directly affecting the rights and legitimate interests of the economic entity in the area of business and other economic activities, if such actions (failure to act) entailed a violation of the rights and legitimate interests of the economic entity granted by the Treaty and (or) international treaties within the Union. The economic entity means a legal entity registered in accordance with the laws of a Member State or a third state or a natural person registered as an individual entrepreneur in accordance with the laws of a Member State or a third state<sup>11</sup>. Not only legal entities registered in the Member States of the Union can submit claim to the Court for the consideration of a dispute on implementation of the Treaty, international treaties within the Union and (or) decisions of the bodies of the Union, but also any legal entity of third state engaged in business activities within the territory of the Union, whose rights and legitimate interests are violated by the decision or actions (failure to act) of the Commission.

Natural persons have a right to file an application to the Court on the issues of established jurisdiction. Thus, the Court, upon an application submitted by employees and officials of the bodies of the Union, including employees and officials of the Court, clarifies provisions of the Treaty, international treaties within the Union and decisions of the bodies of the Union related to labour issues. Documents confirming employment by the body of the Union or Court shall be attached to an application of employees and officials of the Union's bodies<sup>12</sup>. Not only legal entities, but also natural persons engaged in business activities without formation of a legal entity – individual entrepreneurs, whose rights and legitimate interests are violated by the decision or actions (failure to act) of the Commission, may file an application to the Court as an economic entity. Issue of the Court's competence and acceptability of an application is decided by the Court itself. The Court determining whether

<sup>8</sup> See: Order of the Government of the Kyrgyz Republic No. 394-p dated September 7, 2017 // Centralized Bank of Legal Information Data of the Kyrgyz Republic. URL: <http://cbd.minjust.gov.kg> (accessed: 21.10.2019).

<sup>9</sup> See: Decree of the President of the Russian Federation No. 252 dated May 21, 2015 "On the Federal Executive Authority Authorized to Apply to the Court of the Eurasian Economic Union" // President of Russia. URL: <http://www.kremlin.ru/acts/bank/39711> (accessed: 21.10.2019).

<sup>10</sup> See: *Baishev Zh. N.* The Court of the Eurasian Economic Union: Problems of Functioning // Proceedings of the ISL of the RAS. 2019. Vol. 14. No. 1. P. 57–75.

<sup>11</sup> See: Statute of the Court of the Eurasian Economic Union (Annex No. 2 to the Treaty on the Eurasian Economic Union dated May 29, 2014) // Official website of the Court of the Eurasian Economic Union. URL: <http://courteurasian.org> (accessed: 21.10.2019).

<sup>12</sup> See: Rules of Procedure of the Court of the Eurasian Economic Union approved by Decision of the Supreme Eurasian Economic Council No. 101 dated December 23, 2014 // Official website of the Court of the Eurasian Economic Union. URL: <http://courteurasian.org> (accessed: 21.10.2019).



it has the competence to consider a dispute shall be guided by the Treaty, international treaties within the Union and (or) international treaties of the Union with a third party. The EAEU law prescribes a pre-trial dispute settlement procedure. Dispute shall not be accepted for consideration by the Court without the applicant's prior appeal to a Member State or the Commission for the settlement of the issue in the pre-trial procedure through consultations, negotiations or other means stipulated by the Treaty and international treaties within the Union<sup>13</sup>. Issues of improving the pre-trial dispute settlement procedure have become the subject of separate publications by scholars and Judges of the Court<sup>14</sup>. An application for dispute settlement can be submitted to the Court if the Member State or Commission fails to take measures to resolve the issue in the pre-trial procedure within 3 months from the date of receipt of the applicant's request. However, dispute may be referred to the Court before expiration of stipulated period upon mutual consent of the parties.

### Court Proceedings

The Court considers cases in the Grand Chamber of the Court, the Chamber of the Court and the Appeals Chamber of the Court. The Court considers cases for the resolution of disputes upon a Member State's application and cases for clarification at sessions of the Grand Chamber of the Court. The Grand Chamber of the Court consists of all Judges of the Court. The Chamber of the Court shall sit in cases of settlement of disputes on the implementation of the Treaty, international treaties within the Union and (or) decisions of the bodies of the Union upon an application of the economic entity. The Chamber of the Court consists of one Judge from each Member State. The Appeals Chamber of the Court considers applications appealing judgments of the Court rendered at the first instance (Chamber of the Court). The Appeals Chamber of the Court consists of Judges of the Court from the Member States, who did not participate in the consideration of the contested judgement. To ensure the principle of adversarial proceedings at the consideration of the case, parties to the dispute, applicant, their representatives, experts, including experts from specialized groups, specialists, witnesses and interpreters can participate in the Court. Based on the results of the consideration of disputes, upon a statement of the economic entity, the Court renders a judgment binding on the Commission. The Commission brings its decision or individual provisions thereof recognized by the Court as not complying with the Treaty and (or) international treaties within the Union in accordance

with the Treaty and (or) international treaties within the Union within a reasonable term, but not exceeding 60 calendar days from the effective date of the judgment of the Court, unless other term is specified in the judgment of the Court. In case the Commission fails to execute the judgment of the Court, the economic entity is entitled to appeal to the Court for enforcement measures. The Court, upon a petition submitted by the economic entity, shall submit request to the Supreme Eurasian Economic Council within 15 calendar days from the date of receipt thereof to decide on the issue of a failure of the Commission to execute the judgment of the Court. In case of applications for clarification, the Court provides an applicant with an advisory opinion, which is advisory in nature.

For example, the Ministry of National Economy of the Republic of Kazakhstan submitted request to the Court of the Eurasian Economic Union for clarification on application of Article 25 of the Treaty and application of provisions of the Treaty on the procedure of movement of currency in cash and (or) monetary instruments by natural persons across the customs border of the Customs Union dated July 5, 2010. The applicant has asked to clarify the possibility and (or) the need to declare by natural persons currency in cash in the amount exceeding USD10,000 in case of movement by air from one Member State of the Eurasian Economic Union to another Member State of the Eurasian Economic Union in transit through the territory of third countries provided that a natural person stayed in the transfer zone. On October 15, 2018 the Grand Chamber of the Court issued an advisory opinion and determined that the provisions of paragraph 1 (5) of Article 25 of the Treaty on free movement of goods between the Member States without the use of customs declarations and state control is applied only in case free movement of the goods, including cash currency and currency valuables, is carried out directly between the territories of the Member States of the Union. Consequently, in case a natural person moving from one Member State to another (other) Member State(s) of the Union and making a stop in the transit zone of the international airport of a third country exports/imports physical cash, this rule does not apply. The Court came to the conclusion that the provisions of the Treaty dated July 5, 2010 established an obligation of customs declaration of cash and (or) traveller's cheques in case the amount thereof in the course of one-time import into the customs territory of the Union or one-time export from the customs territory of the Union exceeded the amount equivalent to USD10,000, and also monetary instruments, except for traveller's cheques, including during transit through transfer zones of international airports of third countries<sup>15</sup>.

The National Chamber of Entrepreneurs of the Republic of Kazakhstan "Atameken" submitted a request to the Court for clarification of the provisions of Articles 74 and 76

<sup>13</sup> See: Statute of the Court of the Eurasian Economic Union (Annex No. 2 to the Treaty on the Eurasian Economic Union dated May 29, 2014) // Official website of the Court of the Eurasian Economic Union. URL: <http://courteurasian.org> (accessed: 21.10.2019).

<sup>14</sup> See: *Ispolinov A.S., Kadysheva O.V.* Precedents in the application of pre-trial Dispute Settlement Procedure by the Courts of Eurasian Integration // Law. 2016. No. 10. P. 120–126; *Tumanyan A.E.* Pre-Trial Dispute Settlement Procedure: from General to Specific // Eurasian Law Journal. 2017. No. 6 (109). P. 22–26.

<sup>15</sup> See: Acts of the EAEU Court 2018 // Official website of the Court of the Eurasian Economic Union. URL: <http://courteurasian.org> (accessed: 21.10.2019).

of the Treaty and clauses 2 and 5 of the Criteria for classifying the market as cross-border approved by Decision of the Supreme Eurasian Economic Council No. 29 dated December 19, 2012. The reason for the appeal was consideration by the National Chamber of the issue of a possible simultaneous violation by the economic entity of the national laws of the Republic of Kazakhstan and the EAEU law in the field of the protection of competition. On June 18, 2019 the Grand Chamber of the Court issued an advisory opinion stating that the Commission has the exclusive competence in the field of competition in cross-border markets if the relevant criteria are met. The Court found that the exercise of the competence of the Commission and by the authorized bodies of the Member States in respect of the same violations is impossible. If a person by means of one action (failure to act) violates both the laws of the Member State and the EAEU law and such violation has or may have a negative effect on the competition in cross-border markets, then the violation must be suppressed by the Commission and excludes liability under the national laws. Consideration by the Commission of a case on the violation of paragraph 1 of Article 76 of the Treaty in the cross-border market excludes the possibility of the authorized body of a Member State to prosecute an economic entity, whose actions violate paragraph 1 of Article 76 of the Treaty in the national market. The Advisory Opinion also states that the EAEU law provides for mechanisms of interaction between supranational and national authorities when they monitor compliance with the general rules of competition. The Grand Chamber of the Court came to the conclusion that in case of prosecution for violation of the competition rules and imposing sanctions on the economic entity simultaneously by the decision of the authorized body of a Member State and by the decision of the Commission, decision violating the competence stipulated by the Treaty shall be subject to reversal. The mechanisms of interaction between supranational and national authorities when they monitor compliance with the general rules of competition, including transfer of cases by jurisdiction in accordance with the established competence are aimed at the elimination of the suppression of violations of the general rules of competition by bodies without authority for this, proceeding from the rules for the delimitation of competence established by the EAEU law<sup>16</sup>.

The Eurasian Economic Commission applied to the Court of the Eurasian Economic Union for clarification of paragraph 2 of Article 97 of the Treaty on the Eurasian Economic Union dated May 29, 2014 with regard to labour activities of professional athletes – citizens of the Member States and the possibility of establishment in the national laws of quantitative restrictions for this category of persons at the exercise of profession<sup>17</sup>.

<sup>16</sup> See: Acts of the EAEU Court 2019 // Official website of the Court of the Eurasian Economic Union. URL: <http://courteurasian.org> (accessed: 21.10.2019).

<sup>17</sup> See: *ibid*.

In accordance with the indicated rule of the Treaty, the Member States do not establish or apply restrictions established by their laws to protect the national labour market, with the exception of restrictions established by the Treaty and the laws of the Member States to ensure national security (including in the economic sectors of strategic importance) and public order in relation to labour exercised by workers of the Member States, occupation and territory of residence.

The request to the Court was based on the results of monitoring and control held by the Eurasian Economic Commission on fulfilment by the Member States of obligations within functioning of the internal market of the Eurasian Economic Union in terms of engagement of professional athletes – citizens of the Member States in labour without applying restrictions on the protection of the national labour market, according to which labour restrictions for professional athletes – citizens of the Member States exist in the Member States. The legislation of the Member States contains quantitative restrictions on the participation of professional athletes in sports events, depending on their citizenship, which apply, *inter alia*, to citizens of the Member States.

In the Advisory Opinion dated December 7, 2018, the Court concluded that paragraph 2 of Article 97 of the Treaty has direct action and shall be directly applied. It is not allowed to establish in the laws of the Member States and local acts of organizations of physical culture and sports, as well as application of quantitative restrictions concerning professional athletes – citizens of the Member States of the Union in relation to their labour, occupation and territory of stay.

In total, over the period of its existence, the Court examined 44 applications for dispute resolution, clarification and appeals against judgements of the Chamber of the Court. Where 1 application was submitted by a Member State on failure of another Member State to perform the Treaty, 25 applications were submitted by economic entities, 16 applications were submitted by authorized bodies of the Member States and the Commission and 2 applications were submitted by employees and officials of the Commission on the issues related to labour relations. In the examined cases, the Court rendered 13 judgments and issued 16 advisory opinions<sup>18</sup>.

Cases examined by the Court indicate that the activity of this body of the Union is aimed at fulfilling the requirements of the preamble of the Treaty that the Union respects the principle of the supremacy of constitutional rights and freedoms of man and citizen. Thus, Section XVI of the Treaty reflects issues of regulation of financial markets. The Member States within the Union carry out coordinated regu-

<sup>18</sup> See: Statistical Information // Official website of the Court of the Eurasian Economic Union. URL: <http://courteurasian.org> (accessed: 15.01.2020).

lation of financial markets aimed at creation of a common financial market within the Union and ensuring non-discriminatory access to the financial markets of the Member States. One of the priority tasks in this area is guaranteed and effective protection of the rights and legitimate interests of consumers of financial services<sup>19</sup>. Protection of the rights of creditors – natural persons is especially relevant for the states in the era of economic changes<sup>20</sup>.

In foreign legislation, legal relations in the field of consumer lending are usually governed by special laws taking into account specifics of this area and containing provisions aimed at the protection of the rights and interests of all participants of such legal relations. The first consumer credit laws were adopted in the USA (Consumer Credit Protection Act of 1968)<sup>21</sup>, United Kingdom (Consumer Credit Act 1974)<sup>22</sup> and France (1979 French Consumer Code)<sup>23</sup>. The US Consumer Credit Protection Act sets forth fair rules for granting loans, upper limits of rates, rules for the sale of goods by installments and with deferred payments and special clauses in contracts. In 1987, the Council of Europe Directive No. 87/102/EEC of 22 December 1986 governing consumer credit<sup>24</sup> entered into force. In 1975, resolution of the Council of Europe was adopted on the preliminary programme of the European Union for consumer protection and information policy. In accordance with the said resolution, protection of the consumers' economic interests should base on the following principles: 1) protection of purchasers of goods and services against inclusion

into contracts provisions infringing their rights; 2) prevention of damage to the consumer's economic interests as a result of unsatisfactory provision of services; 3) ban on presentations and promotion of goods and services, including financial services, in a form misleading (directly or indirectly) people, to whom they are provided or who are interested in such services<sup>25</sup>. Directive No. 2002/65/EC of the European Parliament and of the Council dd. 23 September 2002<sup>26</sup> and Directive of the European Parliament and of the Council of Europe dd. 28 October 2004 on the legal harmonisation of the European Union Member States concerning credit for consumers are in force in the European Union countries<sup>27</sup>.

In Kazakhstan, solution of the problem of repayment of consumer loans is protracted and affects the activities of banks. On June 9, 2019 the people of Kazakhstan elected a new President, Kasym-Zhomart Tokaev. One of the first Decrees the President of Kazakhstan signed on June 26, 2019 was the Decree "On the Measures to Reduce the Debt Burden of Citizens of the Republic of Kazakhstan". This Decree allowed socially vulnerable segments of the population to write off part of the debt on unsecured consumer loans with second-tier banks and microfinance organizations. According to preliminary data, implementation of such measure will reduce the debt burden of the population to credit organizations and will increase real income of over 500 thousand people<sup>28</sup>.

Along with organizational measures, on January 21, 2019 the law established a restriction for the banks to request payment of remuneration upon the expiry of one hundred and eighty consecutive calendar days of delay in fulfilling an obligation under a mortgage loan agreement of a natural person unrelated to business activities and secured by the

<sup>19</sup> See: Article 70 of the Treaty on the Eurasian Economic Union dated May 29, 2014 // Official Internet portal of legal information. URL: <http://pravo.gov.ru> (accessed: 21.10.2019).

<sup>20</sup> See: The Middle Class in America is Addicted to Microloans. URL: <http://nomad.su/?a=4-201911120013> (accessed: 31.10.2019); Moody's Predicts a Crisis in Kazakhstan and Calls on the National Bank to Take Action. URL: <http://nomad.su/?a=4-201911080033> (accessed: 08.11.2019); Banks Promise to Grant a Loan at 1%: Under What Conditions It Is Possible. URL: [https://www.nur.kz/1826257-banki-obesaut-vydat-kredit-pod-l-pri-kakih-usloviah-eto-vozmozno.html?utm\\_campaign=playbuzz&pb\\_traffic\\_source=whatsapp&utm\\_source=whatsapp](https://www.nur.kz/1826257-banki-obesaut-vydat-kredit-pod-l-pri-kakih-usloviah-eto-vozmozno.html?utm_campaign=playbuzz&pb_traffic_source=whatsapp&utm_source=whatsapp) (accessed: 11.11.2019); Cancellation of the Ban on Traveling Abroad Due to Debt on Loans Proposed in Kazakhstan. URL: [https://www.nur.kz/1827031-otmenit-zapret-na-vyezd-zarrubez-iz-za-dolgov-po-kreditam-predlozili-v-kazahstane.html?utm\\_source=whatsapp&utm\\_medium=ps](https://www.nur.kz/1827031-otmenit-zapret-na-vyezd-zarrubez-iz-za-dolgov-po-kreditam-predlozili-v-kazahstane.html?utm_source=whatsapp&utm_medium=ps) (accessed: 13.11.2019).

<sup>21</sup> See: Consumer Credit Protection Act of 1968. URL: <https://www.govinfo.gov/app/details/STATUTE-82/STATUTE-82-Pg146> (accessed: 13.11.2019).

<sup>22</sup> See Consumer Credit Act 1974. URL: <https://www.legislation.gov.uk/ukpga/1974/39/contents> (accessed: 15.11.2019).

<sup>23</sup> See: Le Code de la consommation. URL: <https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006069565&idSectionTA=LEGISCTA000006146554&dateTexte=vig> (accessed: 15.11.2019).

<sup>24</sup> See: Council Directive 87/102/EEC of 22 December 1986 for the approximation of the laws, regulations and administrative provisions of the Member States concerning consumer credit. URL: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31987L0102:EN:HTML> (accessed: 15.11.2019).

<sup>25</sup> See: Council Resolution of 14 April 1975 on a preliminary programme of the European Economic Community for a consumer protection and information policy. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31975Y0425%2801%29> (accessed: 15.11.2019).

<sup>26</sup> See: Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC. URL: <https://eur-lex.europa.eu/eli/dir/2002/65/oj> (accessed: 15.11.2019).

<sup>27</sup> See: Directive of the European Parliament and of the Council of 28 October 2004 on the harmonisation of the laws, regulations and administrative provisions of the Member States concerning credit for consumers repealing Directive 87/102/EC and modifying Directive 93/13/EC. URL: [http://www.europarl.europa.eu/registre/docs\\_autres\\_institutions/commission\\_europeenne/com/2004/0747/CQM\\_COM\(2004\)0747\\_EN.pdf](http://www.europarl.europa.eu/registre/docs_autres_institutions/commission_europeenne/com/2004/0747/CQM_COM(2004)0747_EN.pdf) (accessed: 15.11.2019).

<sup>28</sup> See: Notes to Decree of the President of the Republic of Kazakhstan No. 34 dated June 26, 2019 "On the Measures to Reduce the Debt Burden of Citizens of the Republic of Kazakhstan". URL: [http://www.akorda.kz/ru/events/akorda\\_news/akorda\\_other\\_events/kommentarii-k-ukazu-prezidenta-respubliki-kazahstana-ot-26-iyunya-2019-goda-34-o-merah-po-snizheniyu-dolgovoi-nagruzki-grazhdan-respubliki-k](http://www.akorda.kz/ru/events/akorda_news/akorda_other_events/kommentarii-k-ukazu-prezidenta-respubliki-kazahstana-ot-26-iyunya-2019-goda-34-o-merah-po-snizheniyu-dolgovoi-nagruzki-grazhdan-respubliki-k) (accessed: 11.11.2019).



real estate pledge<sup>29</sup>. Thus, to protect the borrowers' rights, the state took comprehensive measures on the restriction of the rights of credit organizations to receive excessively high remuneration, to protect the borrower's rights to mortgaged property, to limit unjustified growth in debt and to force credit organizations to recover debt in a timely manner. The main criterion for assessing the effectiveness of protecting the borrower's rights from the willingness of a credit organization to get maximum income is the maximum allowable value of the cost of the loan. In the Republic of Kazakhstan, the maximum allowable yield on a loan is 56 percent, and this is the same threshold indicator for both banks and microcredit organizations<sup>30</sup>. In Russia, the highest possible rates were fixed on microloans without collateral up to RUB 30,000: for a period of up to 30 days – 505%, from 31 to 60 days – 295%, from 61 to 180 days – 250%, from 181 to 365 days – 141%<sup>31</sup>. These indicators are many times higher than the maximum value established for Kazakhstan and indicate excess profits from this type of activities. It is much in evidence that the most profitable are small loans with a short term of use achieving maximum profitability. Naturally, with the possibility of earning 500% income or more, large depositors of banks will transfer their assets to microfinance, and even if the timely return is 25%, then the profitability will exceed 100%, i.e., capital invested by the investor will double in a year. Not many areas of business can boast of such income. It is not surprising that such microcredit activities spanned the whole country. According to the media, in 2017 alone, the volume of online loans issued in Kazakhstan amounted to more than 944,000 contracts concluded with approximately 248,000 customers<sup>32</sup>. This injustice and enslaving nature of loans has led to numerous lawsuits by natural persons. In their turn, the courts took measures to protect the rights of each such borrower. Thus, loan transactions concluded with organizations without a microfinance status were recognized null and void. Terms and conditions of such contracts did not meet the mandatory requirements of legal acts, and the content thereof was aimed at unjust enrichment at the expense of borrowers' monetary funds and

property. Collection by the court of multiply increased debts could lead to a violation of the fundamental human right to an adequate standard of living<sup>33</sup>.

## Conclusion

Summarizing this paper, we can conclude that the Court of the Eurasian Economic Union has emerged as an effectively functioning dispute resolution body in the framework of Eurasian integration. At the same time, taking into account status of the Eurasian Economic Commission as a supranational regulatory body, we consider it appropriate to grant the Commission a right to hold a standing in the EAEU Court on the issues of non-fulfilment (improper fulfilment) by a Member State of its obligations under the EAEU Treaty and international treaties within the Union. In addition, to ensure uniform understanding and application of the EAEU law in the Member States, we propose that the national judicial authorities have the right to submit reference for a preliminary ruling to the EAEU Court concerning interpretation of the EAEU law.

Particular attention within the EAEU is required by the problem of unified legal regulation of the financial markets of the Member States, including consumer lending. We believe it necessary to adopt a separate law on consumer lending to ensure full protection of the borrowers' interests as the initially "weak" party to the consumer credit agreement. In addition, it is necessary to legislatively resolve the issue of contractual jurisdiction in consumer credit agreements as it is done in paragraphs 3 and 4 of Article 13 of the Federal Law of the Russian Federation "On Consumer Credit (Loan)". The study shows that the solution of the problems of consumer lending should be comprehensive and cover measures of both economic<sup>34</sup> and legal nature, as well as mechanisms for their judicial security.

Thus, we believe that the international judiciary established within the EAEU framework protects the economic (contractual) interests of the regional integration, as well as rights and legitimate interests of economic entities.

## REFERENCES

1. *Baishev Zh. N.* The Court of the Eurasian Economic Union: Problems of Functioning // Proceedings of the ISL of the RAS. 2019. Vol. 14. No. 1. P. 57–75 (in Russ.).
2. Ban to Grant Loans to the Poor Will Result in the Appearance of the Grey Market of Loans – Experts. URL: <http://nomad.su/?a=4-201910280023> (accessed: 28.10.2019) (in Russ.).

<sup>29</sup> See: paragraph 9 of Article 34–1 of the Law of the Republic of Kazakhstan dated August 31, 1995 "On Banks and Banking Activities in the Republic of Kazakhstan" // Legal information system of regulatory legal acts of the Republic of Kazakhstan. URL: <http://adilet.zan.kz/rus/docs/Z950002444> (accessed: 21.10.2019).

<sup>30</sup> See: Decree of the Board of the National Bank of the Republic of Kazakhstan No. 377 dated December 24, 2012 "On the Approval of the Maximum Size of the Annual Efficient Rate of Remuneration" // Legal information system of regulatory legal acts of the Republic of Kazakhstan. URL: <http://adilet.zan.kz/rus/docs/V1200008306> (accessed: 21.10.2019).

<sup>31</sup> See: Information on Average Market Values of the Full Cost of a Consumer Loan (Credit). Official website of the Central Bank of the Russian Federation. URL: [https://www.cbr.ru/Collection/Collection/File/22605/16082019\\_mfo.pdf](https://www.cbr.ru/Collection/Collection/File/22605/16082019_mfo.pdf) (accessed: 06.11.2019).

<sup>32</sup> See: 730 Percent Per Annum on Online Loans: Majilis Received Offers of the National Bank. URL: [https://tengrinews.kz/private\\_finance/730-protsentov-godoviyh-onlayn-kreditam-majilis-postupili-341334/](https://tengrinews.kz/private_finance/730-protsentov-godoviyh-onlayn-kreditam-majilis-postupili-341334/) (accessed: 15.05.2019).

<sup>33</sup> See: website of the Supreme Court of the Republic of Kazakhstan. Specific Ruling of the Court Chamber for Civil Cases of the Almaty City Court dated May 11, 2017. Case No. 7599-17-00-2a/2959.

<sup>34</sup> See: Ban to Grant Loans to the Poor Will Result in the Appearance of the Grey Market of Loans – Experts. URL: <http://nomad.su/?a=4-201910280023> (accessed: 28.10.2019).

3. Banks Promise to Grant a Loan at 1%: Under What Conditions It Is Possible. URL: [https://www.nur.kz/1826257-banki-obesaut-vydat-kredit-pod-l-pri-ka-kih-usloviah-eto-vozmozno.html?utm\\_campaign=playbuzz&pb\\_traffic\\_source=whatsapp&utm\\_source=whatsapp](https://www.nur.kz/1826257-banki-obesaut-vydat-kredit-pod-l-pri-ka-kih-usloviah-eto-vozmozno.html?utm_campaign=playbuzz&pb_traffic_source=whatsapp&utm_source=whatsapp) (accessed: 11.11.2019) (in Russ.).
4. Cancellation of the Ban on Traveling Abroad Due to Debt on Loans Proposed in Kazakhstan. URL: [https://www.nur.kz/1827031-otmenit-zapret-na-vyezd-zarrubez-iz-zadolgov-po-kreditam-predlozili-v-kazahstane.html?utm\\_source=whatsapp&utm\\_medium=ps](https://www.nur.kz/1827031-otmenit-zapret-na-vyezd-zarrubez-iz-zadolgov-po-kreditam-predlozili-v-kazahstane.html?utm_source=whatsapp&utm_medium=ps) (accessed: 13.11.2019) (in Russ.).
5. *Fedortsov A.A.* First Stage in the Establishment and Development of the Court of the Eurasian Economic Union // *Modern Problems of the International and Eurasian Justice, The International scientific and practical conference proceedings* / ed. by Yu. N. Starilov. Issue 10. Voronezh, 2017. No. 10, P. 115–120 (in Russ.).
6. *Ispolinov A.S.* Eurasian Justice: from the Court of Community to the Court of the Union // *State and Law*. 2015. No. 1. P. 80–88 (in Russ.).
7. *Ispolinov A.S., Kadyшева O.V.* Precedents in the application of pre-trial Dispute Settlement Procedure by the Courts of Eurasian Integration // *Law*. 2016. No. 10. P. 120–126 (in Russ.).
8. *Kembaev Zh.M.* Comparative and Legal Analysis of the Functioning of the Court of the Eurasian Economic Union // *International Justice*. 2016. No. 2 (18). P. 30–45 (in Russ.).
9. Le Code de la consommation. URL: <https://www.legi-france.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006069565&idSectionTA=LEGISCTA000006146554&dateTexte=vig> (accessed: 15.11.2019).
10. Moody's Predicts a Crisis in Kazakhstan and Calls on the National Bank to Take Action. URL: <http://nomad.su/?a=4-201911080033> (accessed: 08.11.2019) (in Russ.).
11. Rules of Procedure of the Court of the Eurasian Economic Union approved by Decision of the Supreme Eurasian Economic Council No. 101 dated December 23, 2014 // Official website of the Court of the Eurasian Economic Union. URL: <http://courteurasian.org> (accessed: 21.10.2019) (in Russ.).
12. *Seitimova V. Kh.* On certain issues of Jurisdiction of the Court of the Eurasian Economic Union // *Eurasian Law Journal*. 2015. No. 7 (86). P. 23, 24 (in Russ.).
13. *Sokolova N.A.* Eurasian Integration: Capabilities of the Union' Court // *LEX RUSSICA*. 2015. No. 11. P. 96–103 (in Russ.).
14. Statute of the Court of the Eurasian Economic Union (Annex No. 2 to the Treaty on the Eurasian Economic Union dated May 29, 2014) // Official website of the Court of the Eurasian Economic Union. URL: <http://courteurasian.org> (accessed: 21.10.2019) (in Russ.).
15. The Middle Class in America is Addicted to Microloans. URL: <http://nomad.su/?a=4-201911120013> (accessed: 31.10.2019) (in Russ.).
16. *Tumanyan A.E.* Pre-Trial Dispute Settlement Procedure: from General to Specific // *Eurasian Law Journal*. 2017. No. 6 (109). P. 22–26 (in Russ.).
17. *Tumanyan A.E., Borel Yu. S.* On the Law-Making of the Court of the Eurasian Economic Union // *Eurasian Law Journal*. 2016. No. 10 (101). P. 25–28 (in Russ.).
18. *Volova L.I.* Prospects of the Activity of the Court of the Eurasian Economic Union (EAEU) in the Context of Development of Eurasian Integration // *Eurasian Law Journal*. 2017. No. 2. P. 143–147 (in Russ.).

#### Authors' information

##### **BAISHEV Zholymbet N. —**

President of the Court of the Eurasian Economic Union; 5 Kirova str., 220006 Minsk, Republic of Belarus

##### **BAISHEV Ruslan Zh. —**

Master of Law, Judge of the Almaty Municipal Court; 66, Kazybek Bi, 050000 Almaty, Republic of Kazakhstan