

**THE GOVERNMENT OF THE RUSSIAN FEDERATION**  
**Federal State Autonomous Educational Institution**  
**for Higher Learning**

**THE NATIONAL RESEARCH UNIVERSITY**  
**HIGHER SCHOOL OF ECONOMICS**

**Faculty of Law**  
**Department of General and Interbranch Legal Disciplines**  
**Chair of Public and Private International Law**

**Master Degree Curriculum**  
**Year 2**  
Field of Education **40.04.01. – Jurisprudence**  
Master Program **Private International Law**  
Level **Master Degree**

**INTERNATIONAL FAMILY LAW**

**Course Syllabus**

**Author of the Course / Course Instructor**

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**Approved at the Department session**

Natalia Y. Erpyleva  
Department Head

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September 10, 2018 (Protocol N 1)

**Approved at the Academic Council of  
Master Program session**

Natalia Y. Erpyleva  
Program Academic Supervisor

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September 13, 2018 (Protocol N 18)

**Approved at the Chair session**

Natalia Y. Erpyleva  
Chair Head

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September 5, 2018 (Protocol N 1)

**Moscow, 2018**

*This Syllabus cannot be used by other departments of the University or by other universities without a permission of the Departments, which drafted it*

## **COURSE DESCRIPTION**

International Family Law course aims to familiarize the students with the main trends in development of contemporary family law in foreign countries, specifics of family regulation in some national jurisdictions, and the main rules on solving cross-border family disputes stipulated in international instruments. The course will also analyze the main international documents related to family issues, jurisprudence of the European Court of Human Rights, some of the national legislative acts and foreign court judgments. Thus, the course will include elements of comparative law and private international law. Besides, it will also contain elements of international law – to the extent they concern family issues and child's rights in family context. It is, therefore, desirable, that the students have already studied the courses «Russian Family Law» and «Private International Law».

The target audience is both students of the Faculty of Law of the HSE and foreign students.

The course is taught in English.

## **PREREQUISITES**

The Course draws on students' knowledge acquired during their preceding years of university bachelor degree training in law or other social sciences, as well as skills developed through their prior university studies as necessitated by academic curricula including, specifically, academic skills of critical thinking, critical reading, critical writing and reviewing, proficiency in general English and legal English. The syllabus follows the comprehensive curricula designed for preparing university masters students at the NRU HSE Faculty of Law in consistency with the Educational Curricular 40.04.01. "Jurisprudence" for masters' degree in law, LL.M; NRU HSE Faculty of Law Curriculum 40.04.01. "Jurisprudence" for masters' degree in Private International Law endorsed in 2018.

The aim of the course is to provide students with a theoretical and practical understanding of the international regulatory framework in the area of family law and the main trends in regulating family relations in national jurisdictions, covering the issues of conclusion of marriage, divorce, extra-marital cohabitation, the main spousal property regimes and division of matrimonial assets, child's rights within the family, parental responsibilities and parental cross-border disputes over children, as well as issues of inter-country adoption. A special emphasis is placed on the standards developed in the jurisprudence of the European Court of Human Rights, the UN Convention of the Rights of the Child and the Hague Children's Conventions.

## **COURSE OBJECTIVES**

The Course main objectives comprise:

- study of the main international agreements that form the standards of family law and child law, to the extent it relates to family issues (the UN Convention of the Rights of the Child, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Hague Convention on Civil Aspects of International Child Abduction, the Hague Convention on ‘Child Protection’, EU regulations, and other international instruments related to family law);
- study of family law regulation in some national jurisdictions to identify the most important trends in development of family law;
- enhancing the students’ skills of application and interpretation of the international instruments in the family law area;
- enhancing students’ skills in solving practical problems in the field of cross-border family law disputes;
- extending skills required for conducting legal research and analyses in the area of International Family Law.

### **DISTRIBUTION OF WORKLOAD**

Table: Total hours against the self-study (extramural) hours broken down by subject

| Item | Subject-Headings   | Total hours | In-Class Hours, including |                 | Self-study hours |
|------|--|-------------|---------------------------|-----------------|------------------|
|      |  |             | <i>Lectures</i>           | <i>Seminars</i> |                  |
| 1.   | <b>Subject 1.</b> The ‘Internationalization’ of family law. Marriage and extra-marital cohabitation in comparative and cross-border contexts.              | <b>10</b>   | 2                         | 2               | 6                |
| 2.   | <b>Subject 2.</b> Divorce in comparative and cross-border contexts. Property relations between the spouses: a comparative overview of national regulation. | <b>14</b>   | 2                         | 2               | 10               |
| 3.   | <b>Subject 3.</b> Divorce and division of property in cross-border context.  | <b>14</b>   | 2                         | 2               | 10               |
| 4.   | <b>Subject 4.</b> Child and the family.  | <b>12</b>   | 2                         | 2               | 8                |
| 5.   | <b>Subject 5.</b> Disputes over children’s cross-border aspects.   | <b>14</b>   | 2                         | 2               | 10               |

|           |  |           |           |           |           |
|-----------|--|-----------|-----------|-----------|-----------|
| <b>6.</b> | <b>Subject 6.</b> Child removal from the family. Inter-country adoption. | <b>12</b> | <b>2</b>  | <b>2</b>  | <b>8</b>  |
|           | <b>TOTAL:</b>  | <b>76</b> | <b>12</b> | <b>12</b> | <b>52</b> |

## TYPES OF KNOWLEDGE CONTROL

### Self-study control:

- In-betweeners forms: regular inter-active discussions for checking the level of memorizing key notions.

### Intermediate evaluation:

- Exam – graded assessment of the level of acquired knowledge and developed skills during the Course; includes written questions covering syllabus material, i.e. theoretical and practical dimensions.

| Control Type            | Control Element | Modules |   |   |   | Parameters             |
|-------------------------|-----------------|---------|---|---|---|------------------------|
|                         |                 | 1       | 2 | 3 | 4 |                        |
| Intermediate Evaluation | Exam            |         | * |   |   | Written 80-minute exam |

## METHOD OF INSTRUCTION

Classes are split into lectures and seminars. Lectures are conducted in the interactive mode with the focus on the feedback from masters' students. Students are expected to get prepared for the upcoming lectures, which enables them to better comprehend the subject matter delivered by the lecturer. Seminars are aimed at combining interactive methods and spontaneous individual or group debates on specified problem areas. Such interactive tutoring is based on both the prepared and spontaneous modes. Home assignments are intended for reviewing and analyzing international treaties, judgments, textbooks, as well as at preparing to the multitasking format of exercising during in-class teamwork.

## LEARNING OUTCOMES

*Students must gain knowledge on:*

- general standards of International Family Law under the main multinational and regional instruments;

- protection of family law rights in global prospective;
- solving practical problems in the field of cross-border family law disputes.

*Skills and abilities:*

- to use specific terms and sources of the International Family Law;
- practical abilities of research, analysis of the international instruments (such as UNCRC, ECHR, the HCCH conventions and EU regulations) and scientific works;
- skills to analyze and solve cases, building up of the legal position and developing strategy on the cross-border family law issues.

*Students should gain the following competences:*

- ability to work with information (search, evaluate, use information, necessary for fulfillment of academic and professional tasks, from various sources, including application of the systematic approach);
- ability to carry out professional activities in the international environment;
- ability to search, analyze, and work with legally relevant information by using the juridical, comparative and other specific methods,
- ability to describe legal problems and situations in the field of International Family Law.

## **CONTENT OF THE COURSE**

### **SUBJECT 1.**

#### *The ‘Internationalization’ of family law.*

#### *Marriage and extra-marital cohabitation in comparative and cross-border contexts*

1. The subject-matter of the course and the main sources of International Family Law. The ‘Internationalization’ of family law.
2. What is the ‘family’: national approaches and international instruments.
3. Conclusion of marriage: national and international regulatory frameworks.
4. Extra-marital cohabitation, registered partnership and other ‘new’ family forms. The project of the Hague Conference on Private International Law on “Cohabitation outside Marriage”.
5. Right to marry and right to divorce – jurisprudence of the ECHR.

## **Reading List**

### **A. Required**

1. *Estin A.L.* International Family Law Deskbook. American Bar Association, 2017. – 352 p.

2. *Morley J.D.* International Family Law Practice. Thomson West, 2016. – 560 p.
3. *Scherpe J.M. (ed.)* European Family Law. Edward Elgar Pub., 2016. – 1408 p.

### **B. Optional**

1. *Antokolskaia M. (ed.)* Convergence and Divergence of Family Law in Europe. Intersentia, 2007. – 282 p.
2. *Basedow J.* The Law of Open Societies. Private Ordering and Public Regulation in the Conflict of Laws. The Hague, 2015 [Section 5: Family, p. 230-262].
3. *Choudhry Sh., Herring J.* European Human Rights and Family Law. Hart Publ., 2010. – 442 p.
4. *Eekelaar J., George R. (eds.)* Routledge Handbook of Family Law and Policy. Routledge, 2014. – 442 p.
5. *Khazova O.* Family Law on Post-Soviet European Territory: A Comparative Overview of Some Recent Trends // Electronic Journal of Comparative Law. 2010. Vol. 14.1. URL: <http://www.ejcl.org/141/art141-3.pdf>.
6. *Антокольская М.В.* Семейное право: Учебник. М.: Норма, 2013 [Глава 18. Брак и развод в праве европейских стран. С. 161-182; 222-237].
7. *Гетьман-Павлова И.В., Касаткина А.С.* Проблемы коллизионного регулирования брачно-семейных отношений в международном частном праве России // Право. Журнал Высшей школы экономики. 2017. № 1. С. 92-110.
8. *Зенин И.А.* Гражданское и торговое право зарубежных стран. М.: Юрайт, 2018 [Глава 10. Семейное право зарубежных стран. С. 183-197].
9. *Кох Х., Магнус У., Винклер фон Моренфельс П.* Международное частное право и сравнительное правоведение / пер. с нем. М.: Международные отношения, 2003 [Международное семейное право. С. 80-118].
10. *Марышева Н.И.* Семейные отношения с участием иностранцев. М.: Волтерс Клувер, 2007. – 315 с.
11. *Хазова О.А.* Семейное право на постсоветском европейском пространстве: основные новеллы законодательства о браке и разводе // Государство и право. 2011. № 4. С. 31-41.

### **SUBJECT 2.**

***Divorce in comparative and cross-border contexts. Property relations between spouses: a comparative overview of national regulation***

1. Evolution of divorce law: from the 'fault-based' divorce to divorce 'by consent'. Legal separation.
2. Jurisdiction for divorce.
3. The main property regimes/systems: full community, community of acquisitions, deferred community, separation of property.
4. Marriage contract; pre-/postnuptial agreements. Duty to inform and full disclosure.

## Reading List

### A. Required

1. *Estin A.L.* International Family Law Deskbook. American Bar Association, 2017. – 352 p.
2. *Morley J.D.* International Family Law Practice. Thomson West, 2016. – 560 p.
3. *Scherpe J.M. (ed.)* European Family Law. Edward Elgar Pub., 2016. – 1408 p.

### B. Optional

1. *Basedow J.* The Law of Open Societies. Private Ordering and Public Regulation in the Conflict of Laws. The Hague, 2015 [Section 5: Family, p. 230-262].
2. *Boele-Woelki K. et al.* Principles of European Family Law Regarding Property Relations between Spouses (European Family Law Series, Book 33). Intersentia, 2013. – 420 p.
3. *Eekelaar J., George R. (eds.)* Routledge Handbook of Family Law and Policy. Routledge, 2014. – 442 p.
4. *Hodson D.* What is jurisdiction for divorce in EU? The contradictory law and practice around Europe // International Family law. 2014. September. P. 170-174.
5. *Khazova O.* Family Law on Post-Soviet European Territory: A Comparative Overview of Some Recent Trends // Electronic Journal of Comparative Law. 2010. Vol. 14.1. URL: <http://www.ejcl.org/141/art141-3.pdf>.
6. *Антокольская М.В.* Семейное право: Учебник. М.: Норма, 2013 [Глава 18. Брак и развод в праве европейских стран. С. 161-182; 222-237].
7. *Гетьман-Павлова И.В., Касаткина А.С.* Проблемы коллизионного регулирования брачно-семейных отношений в международном частном праве России // Право. Журнал Высшей школы экономики. 2017. № 1. С. 92-110.
8. *Зенин И.А.* Гражданское и торговое право зарубежных стран. М.: Юрайт, 2018 [Глава 10. Семейное право зарубежных стран. С. 183-197].
9. *Кох Х., Магнус У., Винклер фон Моренфельс П.* Международное частное право и сравнительное правоведение (пер. с нем.) М.:

Международные отношения, 2003 [Международное семейное право. С. 80-118]

10. *Марышева Н.И.* Семейные отношения с участием иностранцев. М.: Волтерс Клувер, 2007. – 315 с.
11. *Марышева Н.И., Муратова О.В.* Брачный договор в международном частном праве: правовое регулирование в России и ЕС // Журнал российского права. 2014. № 6.
12. *Хазова О.А.* Семейное право на постсоветском европейском пространстве: основные новеллы законодательства о браке и разводе // Государство и право. 2011. № 4. С. 31-41.

### **SUBJECT 3.**

#### ***Divorce and division of property in a cross-border context***

1. Divorce/separation and division of matrimonial assets.
2. Divorce and maintenance between the former spouses.
3. Division of property and trusts.
4. Property settlement agreements.

### **Reading List**

#### **A. Required**

1. *Estin A.L.* International Family Law Deskbook. American Bar Association, 2017. – 352 p.
2. *Morley J.D.* International Family Law Practice. Thomson West, 2016. – 560 p.
3. *Scherpe J.M. (ed.)* European Family Law. Edward Elgar Pub., 2016. – 1408 p.

#### **B. Optional**

1. *Basedow J.* The Law of Open Societies. Private Ordering and Public Regulation in the Conflict of Laws. The Hague, 2015 [Section 5: Family, p. 230-262].
2. *Boele-Woelki K. et al.* Principles of European Family Law Regarding Property Relations between Spouses (European Family Law Series, Book 33). Intersentia, 2013. – 420 p.
3. *Harper M. et al. (eds.)* International Trust and Divorce Litigation. Family Law, 2013. – 424 p.
4. *Будылин С.Л.* Титулы и ценности. Раздел семейного имущества и трасты. // Закон. 2017. № 2. С. 42-56.



5. *Гетьман-Павлова И.В., Касаткина А.С.* Проблемы коллизионного регулирования брачно-семейных отношений в международном частном праве России // *Право. Журнал Высшей школы экономики.* 2017. № 1. С. 92-110.
6. *Гурченко Е.В., Ковельянова О.А.* Обеспечение прав и интересов супругов при разделе имущества, или как обезопасить бизнес, если семейные отношения сохранить не удалось // *Закон.* 2017. № 2. С. 35-41.
7. *Зенин И.А.* Гражданское и торговое право зарубежных стран. М.: Юрайт, 2018 [Глава 10. Семейное право зарубежных стран. С. 183-197].
8. *Канашевский В.А.* Офшорные компании и трасты. Антиофшорное регулирование. М.: Международные отношения, 2018. [Глава IV. Вопросы семейного права при разделе имущества бенефициаров. С. 225-236].
9. *Кох Х., Магнус У., Винклер фон Моренфельс П.* Международное частное право и сравнительное правоведение (пер. с нем.) М.: Международные отношения, 2003 [Международное семейное право. С. 80-118].
10. *Марышева Н.И.* Семейные отношения с участием иностранцев. М.: Волтерс Клувер, 2007. – 315 с.
11. *Марышева Н.И., Муратова О.В.* Брачный договор в международном частном праве: правовое регулирование в России и ЕС // *Журнал российского права.* 2014. № 6.
12. *Медведев И.Г.* Супружеская собственность: испытание трастом (вопросы коллизионного регулирования) // *Закон.* 2016. № 8.
13. *Ренц И.Г.* Автоматическое изменение права, применимого к супружеской собственности: бомба замедленного действия или панацея? // *Закон.* 2017. № 2. С. 30-34.

#### **SUBJECT 4.**

##### ***Child and the Family***

1. Parentage issues in the cross-border context.
2. Who is the ‘parent’? International surrogacy arrangements (ISA): the key legal problems. The “Parentage/Surrogacy” project of the Hague Conference on Private International Law.
3. Parental responsibility and parental custody: national and international regulation.
4. The status of a child in the family. The main principles and provisions of the UN Convention on the Rights of the Child related to family issues.

5. The best interests of the child – the key concept of the UN Convention on the Rights of the Child.

## Reading List

### A. Required

1. *Buck T.* International Child Law. Routledge, 2014. – 508 p.
2. *Estin A.L.* International Family Law Deskbook. American Bar Association, 2017. – 352 p.
3. *Morley J.D.* International Family Law Practice. Thomson West, 2016. – 560 p.
4. *Scherpe J.M. (ed.)* European Family Law. Edward Elgar Pub., 2016. – 1408 p.

### B. Optional

1. *Van Bueren G.* Child rights in Europe. Council of Europe Publishing, 2007. – 200 p.
2. *Büchler A., Keller H. (eds.)* Family Forms and Parenthood: Theory and Practice of Article 8 ECHR in Europe (European Family Law Series, Book 40). Intersentia, 2016. – 546 p.
3. *Choudhry Sh., Herring J.* European Human Rights and Family Law. Hart Publ., 2010. – 442 p.
4. *Eekelaar J., George R. (eds.)* Routledge Handbook of Family Law and Policy. Routledge, 2014. – 442 p.
5. *Freeman M.* A commentary on the United Nations Convention on the Rights of the Child. Article 3. The best interests of the child. Martinus Nijhoff Publishers, 2007. – 79 p.
6. Handbook on European law relating to the rights of the child. Luxemburg: Publ. Office of the EU, 2015. URL:<http://fra.europa.eu/en/publication/2015/handbook-european-law-child-rights>.
7. *Jänträ-Jareborg M. (ed.)* The Child's Interests in Conflict: The Intersection between Society, Family, Faith and Culture (European Family Law Series, Book 41). Intersentia, 2016. – 206 p.
8. *Khazova O.* Child and the Family // *Kilkelly U., Liefgaard T. (eds.)* International Children's Rights Law. Springer, 2018.
9. *Kilkelly U.* The right to respect for private and family life. A guide to implementation of article 8 of the European convention on human rights. Human rights handbooks, no 1. Strasbourg: Council of Europe, 2003.
10. *Šahović N.V., Doek J.E., Zermatten J.* The Rights of the Child in International Law. Stämpfli Publishers, 2012. – 420 p.

11. *Sutherland E.E. (ed.) The Future of Child and Family Law*. Cambridge University Press, 2012. – 476 p.
12. *Trimmings K., Beaumont P. (eds.) International Surrogacy Arrangements: Legal Regulation at the International Level (Studies in Private International Law Series)*. Hart Publishing, 2013. – 589 p.

## **SUBJECT 5.**

### ***Disputes over children: cross-border aspects***

1. The ‘Hague Children’s Conventions’: the key concepts and main regulatory approaches.
2. Parental agreements: attempts of the Hague Conference on Private International Law to find a solution.
3. Cross-border relocation disputes.

## **Reading List**

### **A. Required**

1. *Buck T.* International Child Law. Routledge, 2014. – 508 p.
2. *Estin A.L.* International Family Law Deskbook. American Bar Association, 2017. – 352 p.
3. *Morley J.D.* International Family Law Practice. Thomson West, 2016. – 560 p.
4. *Scherpe J.M. (ed.)* European Family Law. Edward Elgar Pub., 2016. – 1408 p.

### **B. Optional**

1. *Choudhry Sh., Herring J.* European Human Rights and Family Law. Hart Publ., 2010. – 442 p.
2. *Eekelaar J., George R. (eds.)* Routledge Handbook of Family Law and Policy. Routledge, 2014. – 442 p.
3. *Khazova O.* Child and the Family // *Kilkelly U., Liefaard T. (eds.)* International Children’s Rights Law. Springer, 2018.
4. *Khazova O.* Russia’s Accession to the Hague Convention on Civil Aspects of International Child Abduction 1980: New Challenges for Family Law and Practice // Family Law Quarterly (ABA, USA). 2014. Summer issue. P. 253-266.
5. *Khazova O.* The First Year of Application of the Hague 1996 Convention on Protection of Children in Russia: Success Story // International Family Law. 2014. No. 3. P. 165-169.

6. *McEleavy P.* The European Court of Human Rights and the Hague Child Abduction Convention: prioritizing return or reflection? // *Netherlands International Law Review*. 2015. Vol. 62. P. 365-405.
7. *Schutz R.* The Hague Child Abduction Convention: A Critical Analysis (Studies in Private International Law Series). Hart Publishing, 2014. – 532 p.
8. *Тригубович Н.В., Хазова О.А. (ред.)* Конвенция о гражданско-правовых аспектах международного похищения детей: Научно-практический комментарий. М.: Статут, 2016. – 320 с.
9. *Хазова О.* Принцип 6 Декларации ООН прав ребенка 1959 года в контексте Конвенции о гражданско-правовых аспектах международного похищения детей 1980 года // *Труды Института государства и права Российской академии наук*. 2017. Т. 12. № 6. С. 202-220.

## SUBJECT 6.

### *Child removal from the family. Inter-country adoption*

1. Child removal from the family: the key principles of the jurisprudence of the UN Committee on the Rights of the Child and the European Court on Human Rights.
2. Inter-country adoption: recent development.

## Reading List

### A. Required

1. *Buck T.* International Child Law. Routledge, 2014. – 508 p.
2. *Estin A.L.* International Family Law Deskbook. American Bar Association, 2017. – 352 p.
3. *Morley J.D.* International Family Law Practice. Thomson West, 2016. – 560 p.
4. *Scherpe J.M. (ed.)* European Family Law. Edward Elgar Pub., 2016. – 1408 p.

### B. Optional

1. *Choudhry Sh., Herring J.* European Human Rights and Family Law. Hart Publ., 2010. – 442 p.
2. *Eekelaar J., George R. (eds.)* Routledge Handbook of Family Law and Policy. Routledge, 2014. – 442 p.
3. Handbook on European law relating to the rights of the child. Luxemburg: Publ. Office of the EU, 2015. URL:

<http://fra.europa.eu/en/publication/2015/handbook-european-law-child-rights>.

4. *Jäterä-Jareborg M. (ed.) The Child's Interests in Conflict: The Intersection between Society, Family, Faith and Culture (European Family Law Series, Book 41). Intersentia, 2016. – 206 p.*
5. *Khazova O. Child and the Family // Kilkelly U., Liefgaard T. (eds.) International Children's Rights Law. Springer, 2018.*
6. *Kilkelly U. The right to respect for private and family life. A guide to implementation of article 8 of the European convention on human rights. Human rights handbooks, no 1. Strasbourg: Council of Europe, 2003.*
7. *Šahović N.V., Doek J.E., Zermatten J. The Rights of the Child in International Law. Stämpfli Publishers, 2012. – 420 p.*
8. *Хазова О.А. Семейное право России и практика Европейского суда по правам человека // Европейская конвенция о защите прав человека и основных свобод: итоги и перспективы: материалы Международной научно-практической конференции, 20-21 октября 2010 г. / под ред. Т.А. Сошниковой. М.: Изд-во Моск. гуманит. ун-та, 2010. С. 198-203.*

### **Sample Exams questions**

1. You will have to speak at the international family law conference. The topic of your presentation is “The Internationalization of Family Law”. Please, write an outline of your presentation.
2. A foreign national Nickolas, who has entered into a registered partnership in accordance with the domestic law of his country, is going to get married in Russia with a Russian national Natasha. Will such a marriage be valid under Russian Law? What problems may arise for Nicholas with regard to this situation? What else do you need to know to answer these questions? Please, discuss.
3. Please, explain the differences and common features between the main matrimonial property regimes.

### **ASSESSMENT AND GRADING**

#### **A. Assessment**

- Seminar attendance / participation – 10%
- Self-study (in-between forms) – 20%
- Examination (test) – 70%

An overall assessment formula comprises a sum total of the following variables:

*Final grade = seminar attendance/participation)\* 0.1 + (in-betweenier forms)\* 0,2 + (exam)\* 0.7*

## **B. Grading**

### **Grading rates for written exam:**

- Excellent        8 – 10 points
- Good            6 – 7 points
- Satisfactory    4 – 5 points
- Fail             1 – 3 points
- No attendance 0 points

### **Author of the Course / Course Instructor**

**Olga A. Khazova**, Ph.D. (Institute of State and Law of the Russian Academy of Sciences), LL.M. (Cornell Law School, USA), Associate Professor, Chair of Public and Private International Law, Department of General and Interbranch Legal Disciplines, Faculty of Law, National Research University – the Higher School of Economics (Moscow Campus) (o.khazova@gmail.com)