LAW AND INTERNATIONAL LAW

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INTERRELATION OF INTERNATIONAL LAW AND INTERNAL LEGISLATION OF UKRAINE

Abstract. *An integral part of creating of an independent democratic state is the reformation of the national legal system in relation to its international obligations. An important element in this reformation is the place of international law in the internal legal system, which leads to many discussions due to the mutual relationship of international law norms with national law norms. In modern legal science, the problem of the relationship between international law and internal law is unresolved to this day and generates a lot of discussion. It is obvious that solving this problem is only possible during the actual application of international law and internal legal system, which is caused by an objective process of cooperation between countries on the international stage, where relations between entities are governed by international law.*
Keywords*: international agreement, international law, national law, treaty, ratification*

INTRODUKTION

After the collapse of the USSR, new independent countries appeared on the map of the world, including Ukraine. With the secession from the Soviet Union, Ukraine began to form its own foreign policy and relevant foreign policy structures. With the acquisition of sovereignty, Ukraine becomes a full participant of international life. On September 17, 1992 Ukraine acceded to the Vienna Convention on Succession of States in respect of Treaties (1978) and assumed responsibility for the implementation of international agreements established by the Ukrainian SSR as part of the Soviet Union. With independence, the Government of Ukraine begins to form diplomatic relations with most countries of the world, which has necessitated the formation of its own legal system with the consolidation of the role and place of international law.

The relevance of this topic is that the place of international law in the legal system of Ukraine to date is uncertain, which creates many contradictions regarding the procedure for application and the place of international rules in domestic legal system.

Most authors consider the interaction of international rules and domestic law in terms of the Constitutional Law of Ukraine, paying most attention to the ratification of international agreements. Quite a little attention is paid to the comparison of international and domestic law in terms of analysis of these legal systems and the procedure for applying rules in case of contradictions between them.

To determine the place of international law in the legal system of Ukraine, it is necessary first of all to investigate the issues of differences and interaction of rules of international and domestic law. Thus, **the purpose and main task** of the article is to highlight the problem of the place of international law in national legislation and their mutual relationships, to determine the place of international legal requirements in national legal system.

In accordance with the set purpose, the following tasks are defined:

1. To form the concept of international law;

2. To identify differences in international and domestic law;

3. To establish forms of interaction of norms in national and domestic legislation;

4. To determine the position of the place of international law in the legislation of Ukraine.

In the legal literature, there are many definitions of the concept of "international law", this is due to the fact that this concept can be used in both narrow and broader developed meaning. International law, in a concise sense, is a system of legal norms governing interstate relations. International law in a broader sense is a system of legal principles and norms of a contractual nature that arise as a result of agreements between states and other subjects of international relations and regulate relations between them for the purpose of peaceful coexistence [5, p. 880].

Domestic and international law are two different, independent legal systems, with their own principles, methods of accrual of legal norms, subjects, objects, etc.

The first difference is, first of all, the essence and content of these legal systems. As Professor Kazansky noted - ‘‘The boundary between the law of state and international public law is in the special nature of the interests they protect, national and international, in the special character of legal relationship, which is established by both laws between their respective bearers (laws, treaties) and, finally, in the distinction of their subjects (bearers)’’ [11, p. 266]. If national law is aimed at settling relations arising within a state, then the essence of international law is expressed in the agreed will of nations and states. From this provision the different subjective composition of the above legal systems arises. The subjects of domestic law, in most cases, are individuals and legal entities, and the subjects of private international law are states, nations, and other international organizations. In national law, regulations are in a certain hierarchy with each other, but in international law such a hierarchy is absent [4, p.8].

O. Merezko also believes that ‘‘in principle, the question of the operation of international treaties in domestic law depends on the relationship between national and international law’’ [14, p. 344].. Although international and national law have many differences, they interact closely with each other. Forms of such interaction depend on the concepts of the relationship between domestic and international legal systems, which is reflected in the legislation, legal practice and legal doctrines of each individual state.

One such form of interaction is the assertion that national law serves as a kind of source of international law, as international rules are created as a result of an agreement between its entities, which are states, mainly to satisfy national interests. National law determines the main activities of the state, its policy not only within the country, but also in the international arena. The state, through foreign policy and diplomacy, approves the legal norms and principles enshrined in the minds of its people, domestic regulations and thus affects international law. Rules of domestic law, reflecting national customs, traditions, being transformed into rules of international law, serve as sources of international law, in particular, contribute to the emergence of international customs.

The next form of interaction between international and national law is the opposite of the previous one. It states that international law, its rules and principles determine the ideological and normative basis of national law. The universal principles and rules contained in international law require national law and laws to be their custodians. Legal norms before becoming a part of national legislation are checked for compliance with universal values contained in international law. The constitutions of a number of states enshrine the basic principles and rules of international law, create legal guarantees that these principles and rules will be taken into account by state bodies in domestic activities.

Ensuring and finding an effective balance of rules of international and domestic law are the main in solving the urgent task of harmonious development of states and their legal systems, as well as increasing the quality of international cooperation. In this context, the fundamental document for the development of international legal relations and the formation of foreign policy of the state is, first of all, the Constitution, the norms of which regulate the place of international treaties in domestic law and ensure their implementation throughout the state [9, p.30].

In Ukraine, the question of the place of public international law in the system of national legislation remains quite acute. The Constitution of Ukraine regulates only the provisions on the application of international treaties in the country, although in this area there are many contradictions. According to Art. 9 of the Constitution of Ukraine ‘‘current international treaties, the binding nature of which has been approved by the Verkhovna Rada of Ukraine, are the part of the national legislation of Ukraine’’ [2]. The conclusion of international treaties that contradict the Constitution of Ukraine is possible only after amendments to the Constitution of Ukraine. Article 18 states: ‘‘Ukraine's foreign policy activities are aimed at ensuring its national interests and security by maintaining peaceful and mutually beneficial cooperation with members of international cooperation on generally accepted principles and rules of international law’’ [3].

Interpretation of the provisions of Art. 9 of the Constitution states that international treaties can become part of national legislation only if a certain condition is met, ie only when consent to their binding nature is given by the

Verkhovna Rada of Ukraine, and this has recently constantly depended on the political situation in the country.

Constitution of Ukraine in Part. 2 Art. 9, though not directly, but unequivocally fixes the principle of the supremacy of the Constitution over international treaties. This means that international treaties contrary to the Constitution of Ukraine, regardless of the time of their conclusion and ratification, must be declared unconstitutional by the Constitutional Court of Ukraine, if the appropriate amendments to the Constitution have not been made before their conclusion or ratification.

The vast majority of modern European states hold the supremacy of the Constitution over international treaties. These positions can be substantially corrected only if these countries join certain European organizations, in particular the EU [10, p. 36-37].

In Art. 9 of the Constitution the recognition of the norms of an international treaty as a part of national legislation means that the norm of an international treaty is equated to the act of domestic law, by which it is introduced into the national legislation. Thus, if it is introduced by a presidential decree, it has the legal force of a presidential decree; if by a government decree, it has the legal force of a government decree. Obviously, in the first and second cases, it cannot contradict the law of Ukraine, which has a higher legal force in relation to all other regulations of Ukraine, except the Constitution. But from the point of view of international law, in particular the Vienna Convention on the Law of Treaties, the force of an international treaty cannot depend on the way it is introduced into domestic law. If we proceed from the content of Art. 9 of the Constitution of Ukraine, only treaties ratified by the Verkhovna Rada become part of national legislation. And this contradicts the principle of pacta sunt servanda.

Representatives of the domestic doctrine of international law point to the need for constitutional guidelines that would establish the superiority of international law over domestic law. On the other hand, the constitutional acts and / or practices of some countries of the European Union do not provide for direct action or priority of the rules of international law in the national legal system [12, p. 283].

Much more complicated, as of this date, is the question of the interrelation of national legislation norms of Ukraine with the norms of international treaties, the consent to be bound of which is given by the Verkhovna Rada of Ukraine, in case of conflicts between them.

Most authors - specialists in international law, are of the opinion that in case of contradictions between the norms of international treaties ratified by the Verkhovna Rada and the norms of national legislation, the norms of international treaties are subject to priority application. The main arguments in favor of this position are that it follows from the constitutional principle of Ukraine's conscientious fulfillment of its international obligations, which, in turn, is due to the strengthening of universal trends in the modern international community, which include the application of the primacy of international law [8, p. 26].

This provision is contained in the norm of Art. 19 of the Law of Ukraine "On International Treaties" 2004, which states that if the international treaty of Ukraine, which entered into force in the prescribed manner, establishes rules other than those provided for in the relevant act of the legislation of Ukraine, the rules of the international treaty apply.

In addition, as a confirmation of the primacy of the rules of international law over domestic norms, they frequently refer to the above-mentioned Vienna Convention on the Law of Treaties of 1969, which Ukraine ratified as part of the USSR. It states that ‘‘every current treaty is binding on its participants and must be faithfully executed», ie the country must adhere to the principle of pacta sunt servanda, and that its «participant cannot refer to the provisions of its domestic law as an excuse for non-performance of the treaty’’ [1].

It would seem that the above arguments must indicate the unquestionable dominance of international law in the national legal system, but a thorough analysis can reveal a certain discrepancy.

First, it should be noted that the principle of Ukraine's conscientious fulfillment of its obligations, ie the principle of pacta sunt servanda, is not directly enshrined in the Constitution, but follows from the generally accepted principles and rules of

international law, which Ukraine in accordance with Art. 18 of the Constitution of Ukraine undertakes to be guided in its foreign-policy activities.

Secondly, the reference to the Vienna Convention on the Law of Treaties and the Law of Ukraine "On International Treaties of Ukraine" to justify the priority of international treaties over national law is also not entirely convincing and legally correct, as there are opinions in domestic jurisprudence that the current Constitution of Ukraine did not confirm the rule that was provided for in paragraph 2 of Art. 17 of the Law of Ukraine "On International Treaties of Ukraine" in 1993 and reproduced in Part 2 of Art. 19 of a similar law of 2004, and therefore it does not comply with Art. 9 of the Constitution of Ukraine and in view of the provisions of paragraph 1 of its Transitional Provisions it does not apply. This means that the principle of supremacy of international treaty over domestic norms, which followed from the norm of the old Law of Ukraine "On International Treaties" in 1993, and became fully reproduced in a new similar law since 2004, does not comply with the provisions of the Constitution of Ukraine in view of paragraph 1 of its Transitional Provisions, which states that "Laws and other regulations adopted before the entry into force of the Constitution are valid in part that does not contradict the Constitution of Ukraine". And since the current Constitution of Ukraine has not confirmed the principle of supremacy of international treaties in national law, it is possible to conclude that the above-mentioned norm of the Law of Ukraine does not comply with the Constitution.

According to Professor M.I. Cozyubra, the rules of international treaties concerning human and civil rights and freedoms have priority over the norms of national law, and the constitutional grounds for justifying such priority of norms of international treaties ratified by the Verkhovna Rada over the norms of national legislation of Ukraine should not be sought in Articles 9, 18 or even 22 of the Constitution of Ukraine, as some authors do, referring to justify the constitutional grounds of priority of international human rights treaties over the norms of national legislation of Ukraine to Part 3 Art. 22, according to which "when adopting new laws or amending existing laws, it is not allowed to narrow the content and scope of existing rights and freedoms". Although this constitutional provision can be used in

the case of conflicts between an international treaty and national legislation of Ukraine, it has no direct bearing on the priority of international treaties. It, taking into account the mentioned provision of Part 1 Art. 9 of the Constitution, can be interpreted as equal to an international treaty, the binding nature of which is given by the Verkhovna Rada of Ukraine in the form of a law, with other laws.

The answer to the above question, according to M. Cozyubra, gives Part 1 Art. 8 of the Constitution of Ukraine, which enshrines the principle of supremacy of law. "The principle of the rule of law acquires an independent meaning different from the traditional principle of supremacy of law for domestic theory and practice, at first, when the law is not identified with the system of legislation, ie when there is a theoretical and practical distinction between law and enforce law. Secondly, and this is obviously the main thing for clarifying the relationship between the norms of international human rights treaties and the norms of national legislation in cases of conflicts between them), the principle of supremacy of law can achieve its purpose - to become decisive in relations between all participants in public life, primarily between the person and state power, when the law, regardless of the possible diversity of its definitions, is inextricably connected with the person, his rights and freedoms» [12, p.350].

Some experts in scientific law propose to carry out constitutional reform and introduce into the Constitution the provisions of the Declaration on State Sovereignty of Ukraine, which proclaims the priority of international rules over the rules of domestic law [15].

It is necessary to introduce into the Constitution of Ukraine also the norms on the interrelations of national legislation with the rules of customary international law, generally accepted principles and rules of international law, international treaties that do not require ratification by the Verkhovna Rada, binding decisions of international bodies and organizations, judicial institutions, etc.

Having identified all the above, we can conclude that as of this date the position of international law in the legislation of Ukraine is not fully defined, and this in turn leads to a number of differences. It is appropriate to propose a provision for the Constitution that would enshrine the principle of the international rule over domestic

norms, because that is what its importance to the legal system of the state requires. It would seem necessary to correct objective shortcomings in the current Constitution of Ukraine by closing gaps, resolving existing contradictions, avoiding the possibility of double interpretation. In particular, the Constitution needs to establish clear and unambiguous norms that would regulate the application of sources of international law in Ukraine, except international treaty, regulate the relationship between international treaties, generally accepted principles and rules of international law and national law, prioritize international rules over domestic norms. The introduction of amendments to the Constitution would reduce differences in the country's legislation and emerging conflicts.

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