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Some aspects of implementation by states of decisions of international bodies

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Abstract: This article explores the relationship between a nation's constitution and the decisions made by international organizations within a sovereign country's territory. It analyzes international legal documents and examines how international law aligns with national law, particularly in the context of human rights. The article emphasizes that, for individuals residing within a specific country, their primary legal framework is the domestic law, which is built upon the nation's constitution. However, it acknowledges the significance of universally recognized human rights and freedoms outlined in the Universal Declaration of Human Rights of December 10, 1948, as a document bridging international and national law. The conclusion suggests that a productive approach to protecting human rights involves harnessing the potential of international, integration, and national legal systems.

Keywords: international law, human rights, constitution, international organization, international body, interaction.

Халықаралық органдардың шешімдерін мемлекеттердің орындауының кейбір аспектілері

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Түйіндеме. Мақалада ұлттық Конституцияның құқықтық күші мен егеменді ел аумағындағы әртүрлі халықаралық ұйымдар мен олардың органдарының шешімдерінің арақатынасы қарастырылған. Халықаралық құқықтық құжаттар, Халықаралық құқық пен ұлттық құқық нормаларының арақатынасының кейбір аспектілері талданады. Адам құқықтарына қатысты салада азамат пен белгілі бір елдің аумағында тұратын адам үшін егеменді мемлекет Конституциясының ережелері негізінде және оны дамытуда қалыптасқан оның қолданыстағы құқығы ең жақын және тиімді реттеуші болып табылатыны атап өтілді. Бұл ретте халықаралық құқық пен ұлттық құқықты біріктіретін негізгі құжат 1948 жылғы 10 желтоқсандағы адам құқықтарының жалпыға бірдей декларациясында баяндалған адамның жалпыға бірдей танылған құқықтары мен бостандықтары болып табылады. Адам құқықтарын неғұрлым тиімді қорғау мақсатында халықаралық, интеграциялық және ұлттық құқықтың мүмкіндіктерін біріктіру нәтижелі болады деген қорытындыға келді.

Негізгі сөздер*:* халықаралық құқық, адам құқықтары, конституция, халықаралық ұйым, халықаралық орган, өзара іс-қимыл.

Некоторые аспекты выполнения государствами решений международных органов

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Аннотация. В статье рассмотрены вопросы соотношения юридической силы национальной конституции и решений различных международных организаций и их органов на территории суверенной страны. Проанализированы международно-правовые документы, некоторые аспекты соотношения норм международного права и национального права. Отмечено, что в сфере, касающейся прав человека, для гражданина и человека, проживающего на территории конкретной страны, наиболее близким и эффективным регулятором

является ее действующее право, сформированное на основе и в развитие положений Конституции суверенного государства. При этом основным документом, объединяющим международное право и национальное право, являются общепризнанные права и свободы человека, изложенные во Всеобщей декларации прав человека от 10 декабря 1948 года. Сделан вывод о том, что в целях более эффективной защиты прав человека продуктивным будет объединение возможностей международного, интеграционного и национального права.

Ключевые слова: международное право, права человека, конституция, международная организация, международный орган, взаимодействие.

Introduction. At the present stage, humanity has gained considerable experience in the field of interaction between international and national law, nevertheless, along with the processes of constant development of international relations, economic and political processes, issues of the order and limits of international law, decisions of international bodies on the territory of a sovereign country periodically arise in different countries of the world.

In general, in this matter, almost all researchers are supporters of the conscientious and full implementation by States of concluded international treaties in accordance with the principle of "Pacta sunt servanda", which, according to the wording of article 26 of the Vienna Convention on the Law of Treaties, means that "Every existing treaty is binding on its parties and must be faithfully implemented by them" [1]. Here it is necessary to pay attention to the fact that the Vienna Convention on the Law of Treaties does not so categorically affirm the principle of unconditional fulfillment of international treaties. Experts, as a rule, cite the first half of article 27 of the Vienna Convention: "A party may not invoke the provisions of its domestic law as an excuse for its failure to fulfill a contract," without particularly emphasizing that further in the same article of the Convention, a significant exception to the rule of mandatory fulfillment of contracts is allowed: "This rule applies without without prejudice to article 46." Indeed, article 46 of the Vienna Convention on the Law of Treaties allows for the possibility, in certain cases, of a party to a treaty not fulfilling its obligations. This applies both to procedural aspects when concluding a contract (a clear violation of a provision of the internal law of the State concerning the competence to conclude contracts) and to the substantive part of the contract – a violation of the norms of the internal law of the State of particular importance. It is quite obvious that the set of norms of "particularly important importance" for any State is their constitutions. This article is devoted to some aspects of the implementation by sovereign states of decisions of bodies of international organizations.

Methods and materials. The material for the study was international legal documents (the Universal Declaration of Human Rights of December 10, 1948, the Charter of the United Nations of October 24, 1945, the Syracuse Principles for the Interpretation of Restrictions and Derogations from the Provisions of the International Covenant on Civil and Political Rights1985, the Limburg Principles for the

Implementation of the International Covenant on Economic, Social and Cultural Rights, adopted in 1986 G., the Constitution of the Republic of Kazakhstan, examples from the activities of the Constitutional Court of the Russian Federation, the Constitutional Council of the Republic of Kazakhstan, The Constitutional Court of the Republic of Kazakhstan, etc.). The methods of legal analysis, comparative, synthesis, as well as a historical approach to research are applied).

Discussion. Certain problems arise regarding the timeliness and completeness of the execution of decisions of various international organizations and their bodies on the territory of a sovereign country. For the most part, this situation is observed in the field of international human rights law, when some international as well as regional organizations and their bodies, including judicial ones, make such recommendations, conclusions, decisions that are perceived by sovereign States as not conforming to the constitutions in force in the country, established ethical, religious and moral traditions, and Sometimes they are regarded by States as the imposition of alien values, as interference in their internal affairs.

This applies, for example, to a number of decisions of the European Court of Human Rights (ECHR) issued in relation to cases related to the implementation by member States of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR); some recommendations of the UN treaty bodies contained in the Concluding Observations on the periodic reports of countries on the amendment of certain norms of national legislation, the powers of the constitutional control bodies and even the constitutions of states [2], etc. For example, on July 14, 2015, the Constitutional Court of the Russian Federation ruled that the decisions of the European Court of Human Rights (ECHR) should be executed taking into account the supremacy of the Constitution of the Russian Federation. At the same time, the Constitutional Court of the Russian Federation noted that if the ECHR interprets the Convention contrary to the Constitution of the Russian Federation, then by virtue of the supremacy of the Basic Law, Russia will be forced to abandon literal adherence to the ruling of the Strasbourg Court. It is further noted that "this conclusion correlates with the practice of the highest courts of European countries (in particular, Germany, Italy, Austria, Great Britain), which also adhere to the principle of priority of the norms of national constitutions in the execution of decisions of the ECHR, and the norms of the Vienna Convention on the Law of Treaties. At the same time, when resolving such conflicts, it is necessary not to strive for self-isolation, but to proceed from the need for dialogue and constructive interaction. Only in this way can truly harmonious relations be built between the legal systems of Europe, the basis of which will not be subordination, but mutual respect" [3].

It should be borne in mind here that each State, in the course of its historical development, has developed different approaches to the implementation of its international legal obligations on its territory, and this is due to its civilizational characteristics. It is quite natural that taking into account the factor of civilization, the peculiarities of the culture of each country, is also laid down in the main international legal documents in the field of human rights. Thus, paragraph 2 of article 29 of the

Universal Declaration of Human Rights, paragraph 3 of article 12 of the International Covenant on Civil and Political Rights [4], articles 4, 8 of the International Covenant on Economic, Social and Cultural Rights[5] allow restrictions on the exercise of human rights and freedoms that can be established by national law "exclusively in order to ensure due recognition and respect for the rights and freedoms of others and to meet the just requirements of morality, public order and general welfare in a democratic society" [6].

In 1985, the Syracuse Principles for the Interpretation of Limitations and Derogations from the Provisions of the International Covenant on Civil and Political Rights were adopted. Article 58, paragraph D of Section II, "Derogations from rights in connection with a state of emergency", develops paragraph 2 of article 4 of the ICCPR, according to which, during a State of emergency in a State in which the life of the nation is under threat and the existence of which is officially announced, States parties to the Covenant may take measures derogating from their obligations obligations under the Pact. But this provision cannot serve as a basis for any derogations from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18.

In paragraph "D. Rights that cannot be derogated from", it is stated that "58. No State Party, even during a state of emergency threatening the life of the nation, has the right to derogate from the articles of the Covenant guaranteeing the right to life; the right to freedom from torture or cruel, inhuman or degrading treatment or punishment, as well as medical or scientific experiments without free consent; the right to freedom from slavery, slave trade and servitude; the right to freedom from imprisonment due to inability to fulfill any contractual obligation; the right to ensure that criminal liability is determined by the provisions of only the legislation that was in force and applied at the time of the act or omission, except in cases where later legislation established a lighter punishment; the right to recognition of a person's legal personality; the right to freedom thoughts, conscience and religion.

The rights enshrined in these provisions are not subject to derogation under any circumstances, even with the confirmed goal of preserving the life of the nation" [7].

The Limburg Principles for the Implementation of the International Covenant on Economic, Social and Cultural Rights, adopted in 1986 (part of the provisions of which are based on the Syracuse Principles), in paragraph 6 contains a provision that "The realization of economic, social and cultural rights can be achieved in various political conditions. There is no single way to fully implement them..." [8]. Regarding the issue of violations of economic, social and cultural rights, the document notes that "In determining what constitutes non-fulfillment of obligations, it is necessary to take into account that the Covenant provides the State party with a certain degree of freedom in choosing the means used to achieve its goals ..." and paragraph 72 provides a list of cases when the State partythe participant violates the Pact. It is noteworthy that almost all of them are characterized by the State's intention not to comply with one or another provision of the Covenant: "intentionally does not comply with generally recognized minimum international standards for the exercise of rights that it is able to comply with"; ... "intentionally delays or suspends the progressive realization of a right, except

in cases where it acts within the limits permitted by the Covenant, or commits such actions due to lack of available resources or force majeure;", "does not submit reports in accordance with the requirements of the Covenant".

The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights of 1997 also emphasize that one of the qualifying signs of a violation of the Covenant by a State party is "intent": "11. A violation of economic, social and cultural rights occurs when a State implements, through action or omission, a policy or practices that intentionally contradict or ignore the obligations of the Covenant, or do not achieve the required standards of conduct or result." Otherwise, States "enjoy a certain degree of freedom of action in choosing the means to fulfill their obligations" [9].

That is, there are documents in international law that regulate in sufficient detail the possibility of choosing the means of implementing the norms of international legal documents, including restrictions on certain human rights in emergency situations declared by the State for a given period.

Cases of "intentional" violations of international human rights law occur, as a rule, during armed conflicts, and here the norms of international humanitarian law come into force. In ordinary, peaceful life, the state, in accordance not only with its international legal obligations, but also simply because of its own self-preservation, tends not to create such "intentional" violations.

As noted above, the Bill of Human Rights also contains norms that allow for the restriction of human rights, the appearance of which is associated with taking into account the culture of the country, the peculiarities of its historical (legal, religious, etc.) development. Civilizations and cultures that have developed over centuries or even millennia, as a rule, perceive innovations rather cautiously, or do not accept them due to incompatibility with their traditional culture, and defend their values.

The Treaty on the European Union (DES), which is currently the main constituent document of the European Union, shows an example of defending one's civilizational identity. Thus, paragraph 1 of article 3 of the Treaty on European Union contains the following provision: "1. The Union's aim is to promote peace, *its values* and the well-being of *its people*" [10].

It would be fair to recognize the same approach of emphasizing and defending *their civilizational values* for other countries, including Kazakhstan, as well as Russia and other post-Soviet countries, to which international bodies make decisions that are not always acceptable to sovereign subjects of international law.

In such cases, the key point of dispute is the recommendations (decisions) adopted by a small circle of specialists on the implementation of a particular norm of an international treaty recognized by the State in the country. It should be borne in mind that the recommendations of the bodies of international organizations are backed by very real experts with their own political and legal views, beliefs, who in some cases, even if there are reasoned objections from their expert colleagues, insist on the formulation of insufficiently substantiated, in the opinion of representatives of States, decisions (recommendations). Such an approach, in our opinion, is not productive, moreover, it does not correspond to the very purpose of international law, which is

aimed primarily at ensuring the peaceful, conflict-free functioning of the international system based on the coordination of the wills of the subjects of international relations.

In 2022, during a large-scale constitutional reform, President K.K. Tokayev set the task of recreating the Constitutional Court in Kazakhstan instead of the then-existing Constitutional Council. It should be emphasized here that the Constitutional Council of the Republic of Kazakhstan (CCRC) has carried out a significant, productive, constructive amount of work over all the years of its activity, including explaining the norms of the Constitution and on the issue of the correlation of norms of international and national law. A number of decisions of the CCRC have become fundamental in carrying out legislative work in the country, formed the basis for scientific argumentation of certain positions of official representatives of the state in the international arena, served to improve both projects and existing international treaties of Kazakhstan and other subjects of international law.

For example, explaining the provision of article 8 of the Constitution that the Republic of Kazakhstan respects the principles and norms of international law, the Constitutional Council of the Republic of Kazakhstan briefly and precisely, convincingly and indisputably indicated that this *"means the desire to take them into account when creating domestic law"*. [11].

When checking the constitutionality of the norms of international acts specified in the submission of the Kyzylorda Regional Court, the Constitutional Council of the Republic of Kazakhstan proceeded from a number of constitutional provisions, including those providing guarantees of the constitutional rights and freedoms of citizens of Kazakhstan (Article 12 of the Constitution), as well as the provisions of paragraph 2 of Article 2 of the Constitution, according to which the sovereignty of the Republic extends to its entire territory the territory. This principle, as emphasized by the Constitutional Council, means the independence and independence of Kazakhstan in matters of domestic and foreign policy, the supremacy of the state and its authorities within its territory.

Among the key documents adopted by the Constitutional Council of the Republic of Kazakhstan regarding the country's implementation of decisions of international organizations and their bodies is a Resolution dated November 5, 2009, in which the constitutional control body, based on the norms of the Basic Law, noted that, according to the Agreement on the Customs Union Commission of October 6, 2007, ratified by the Law of the Republic of Kazakhstan On June 24, 2008 (hereinafter referred to as the Agreement), the Customs Union Commission (hereinafter referred to as the Commission) was established in 2009. The Commission became the first truly functioning supranational body to which competence was transferred to ensure the conditions for the functioning and development of the Customs Union on the principles of voluntary phased transfer of part of the powers of the state bodies of the Parties to the Commission.

In this regard, a question has arisen in our country. The Constitution of the Republic of Kazakhstan does not contain a special provision providing for the possibility of transferring certain powers of state bodies of the country to international

organizations and their bodies. The Government of Kazakhstan, when considering the issue of how to implement the decisions of the Customs Union Commission, which are binding in accordance with Article 7 of the Treaty, appealed to the Constitutional Council of the Republic for an appropriate explanation.

The Constitutional Council, in its Resolution on this issue dated November 5, 2009, noted that "... decisions of international organizations and their bodies that violate the provisions of the Constitution that the sovereignty of the Republic extends to its entire territory and the inadmissibility of changing the unitarity and territorial integrity of the State established by the Constitution cannot be recognized as binding on Kazakhstan, forms of government of the Republic. Decisions of international organizations and their bodies that infringe on the constitutional rights and freedoms of man and citizen cannot be applied directly and, accordingly, have priority over the normative legal acts of the Republic of Kazakhstan" [12].

The Constitutional Court of the Republic of Kazakhstan, in an Additional Resolution dated May 22, 2023 "On the interpretation of paragraphs 2 and 4 of the Operative part of the normative resolution of the Constitutional Council of the Republic of Kazakhstan dated November 5, 2009 ..." confirmed that "decisions of international organizations and their bodies to which the Republic of Kazakhstan is a party, adopted and entered into force without taking into account national interests and compliance with these conditions, including the decisions of the EEC Board, put into effect in accordance with the procedure established by the draft Protocol, They cannot be binding on the Republic, have the properties of a ratified international treaty and, accordingly, have priority over the laws of Kazakhstan" [13].

Results. The above provisions of the decisions of the Constitutional Council of the Republic of Kazakhstan and then the Constitutional Court of the Republic of Kazakhstan must be taken into account when interacting with international organizations and international quasi–judicial bodies, which sometimes recommend countries to adjust not only legislation, but also the norms of the Constitution. As a rule, such recommendations are addressed to young sovereign states, which include Kazakhstan. It is precisely because of the supremacy of the Constitution of a sovereign country that decisions of international bodies should be taken during a constructive, mutually respectful dialogue with countries, and executed in accordance with the accepted domestic order.

The concept of "indivisibility, interdependence, interconnectedness" of human rights also implies the inclusion in this sphere of all levels of their provision and protection – from global to national, from universal international legal documents to national constitutions and domestic legislation that are closest to a person and a citizen and directly regulate the entire range of their rights and freedoms.

The Constitution of the Republic of Kazakhstan of 1995, as the Basic Law of the country, is a key document defining all aspects of the state and legal life of our country, including in the domestic implementation of international norms. This role is determined by the defining place of the Constitution in regulating the main activities of the state.

The Constitution does not just declare the intentions of the State in relation to international treaties, it gives specific guidelines and guarantees for their implementation, defines not only the procedure for introducing the norms of international law into the national legal system, but also its legally possible limits. The possibility of ratifying an international treaty that does not comply with the Constitution of the Republic is quite small, since the Basic Law defines a range of state bodies that are responsible for the validity and accuracy of international legal activities. But even after the ratification of an international treaty, a State may, upon detection of certain negative consequences of this treaty, denounce it or raise a question to the other party to the treaty about its adjustment.

The Basic Law of the Republic of Kazakhstan, in addition to being built on the principles and norms of modern international law, contains absolutely correct provisions on respect for generally recognized principles and norms of international law and the fulfillment of obligations assumed by the country.

Therefore, it seems that states, adhering to the peremptory norms of international law set out in a concentrated form in the UN Charter, seeking to coordinate their interests on other fundamental issues of the world order and international relations, will otherwise adhere to a policy of protecting their peculiarities, national specifics, the basis of which are centuries-old developed civilizational values enshrined in Constitutions.

In today's interconnected and interdependent world, the national legal system is as sovereign as the State itself is sovereign. As a rule, in the territory of any State, the norms created without the sanction of the national government, in addition to its legislative, executive and judicial bodies, cannot fully operate.

The practice of the country's Basic Law shows that the Constitution of Kazakhstan sufficiently ensures the implementation of international treaties in the Republic and guarantees the neutralization of negative influence on domestic life from the outside, having supremacy over the norms of all, including ratified international treaties to which our country is a party.

Conclusion. Thus, the constitutions of most countries of the world, as well as the Constitution of the Republic of Kazakhstan, are based on the norms of international law. Therefore, it would be unlawful to oppose or put the generally recognized principles and norms of international law, this kind of "universal constitution" above the national Constitution, which expressed the will of the people of the country when discussing its draft and then approving the Basic Law. Hence, it is quite understandable that sovereign states, in turn, explaining the impossibility of full or partial implementation of certain decisions of international organizations, refer to the existing national practice of a reliable level of human rights protection, to the centuries-old customs and traditions of the people, to their constitutions, etc.

Indeed, the Constitution is a pronounced social contract or pact between the people as the sole source of State power and the State as an apparatus of government, the provisions of which must be implemented in accordance with the principle of "Pacta sunt servanda". In addition, the international legal recognition of young sovereign

states in the form of a political and legal act of other states, as an official, often solemn, confirmation of the emergence of a new subject of international law with its own territory, population, government, means recognition of the country's constitution, on the basis of which national law is built.

It is obvious that when adopting various kinds of recommendations, suggestions, comments, experts of international bodies need to take more into account the national specifics of a particular country, and state bodies need to carefully analyze the norms of international legal acts adopted for execution and strive for their implementation. It is about combining the possibilities of international and national law, primarily in order to better protect human rights. Here it is necessary to find a balance, an optimal way to protect human rights while preserving national characteristics, including domestic law, which does not contradict the provisions of the UN Charter and the norms of generally recognized international legal documents, but on the contrary, finds new opportunities for their fuller implementation.

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