Materials of Conferences

ON THE RELATIONSHIP BETWEEN INTERNATIONAL LAW AND DOMESTIC LAW IN THE SPHERE OF HUMAN SCIENCES

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On the basis of general notions concerning the relationship between international law and domestic law we can consider the specific features of these relations in the human rights sphere reflected in the activities of treaty bodies. One of the peculiarities of international treaty provisions regulating domestic relations, in particular, in the human rights sphere is that reference rules of domestic law are not enough for the enforcement of those provisions [1].

A lot of international treaty provisions in the human rights sphere are not self-executable, as they only set the general standards and minimal requirements in the human rights sphere and do not fully describe the essence of human rights and freedoms, their guarantees, the mechanisms of their insurance and the ways of their protection.

The international legal acts in the human rights sphere were developed during "the war" and the countries with opposite social systems deliberately did not specify the contents of a number of categories under discussion [2]. At present, when there no longer exists a global opposition of two socio-economic systems, serious conflicts between different countries concerning certain human rights issues prevent the lawyers from formulating the provisions of international human rights agreements in such a way that they be self-executable.

R.A. Müllerson cited the decision of the Italian Constitutional Court concerning the application of certain provisions of the Covenant on Civil and Political Rights as an example of acknowledging that certain provisions of the agreements in the human rights protection sphere are not self-executable. The Italian legislation enforced that Covenant as a law. But the Italian Constitutional Court refused to enforce the corresponding provisions of that Covenant because the Law only implemented the self-executing Covenant provisions [3].

It is often impossible to implement international law in the human rights sphere without adopting specifying domestic acts because, as a rule, international human rights treaties do not contain any provisions concerning the mechanisms of human rights realization and the methods of their protection. Besides, the essence of these subjective rights is often specified only in a generalized manner. In addition to the above, the omission of corresponding provisions in international treaties often seems justified as the introduction of corresponding amendments is in the sphere of governments.

Such provisions are implemented by the second implementation method that is an incorporation performed by issuing domestic laws and regulations which define the provisions of international treaties, usually by means of laws, which is testified by the experience of different countries.

The necessity of issuing legislative acts is proved by the text of international human rights treaties themselves. In accordance with Article 2, clause 2 of the International Covenant on Civil and Political Rights each state participating in the Covenant shall use the required efforts for taking legal and other actions which might be necessary for exercising the rights acknowledged by the Covenant. *Similar regulations can be found in other universal human rights treaties.*

In spite of the fact that the above Covenant Article does not contain the requirement concerning the inclusion of its provisions in the national legal system the participating states in accordance with the Covenant shall "respect and secure" the rights acknowledged in the Covenant (Article 2, clause 1), as well as guarantee the possibility of enjoying those rights to all persons under their jurisdiction. Moreover, Article 2, clause 3 of the Covenant contains the requirement that the states shall provide effective remedy for any person whose rights and freedoms acknowledged by the Covenant have been infringed on.

In addition to the above, certain provisions of universal conventions in the sphere of human rights protection are self-executable and, consequently, in order to be executed no extra regulations are required from the countries which acknowledge international law (international agreements) as part of domestic law or the national legal system. In our opinion, such provisions include prohibition of torture, non-discrimination on grounds of race, color of skin, sex, language and religion. However, in certain countries, for example in those strictly separating between international and domestic law the provisions of international human rights agreements are beyond direct applicability without adopting implementing acts.

That said, legal measures are often insufficient for the state in order to perform the provisions of conventions, especially when we talk about economic, social and cultural rights. As V.A. Kartashkin points out, the practical value of providing a legislative framework for rights and freedoms only means the possibility of exercising those rights, but that possibility can become real only under certain conditions, in particular, if the state pursues a deliberate policy [4].

With regard to certain CIS countries one can single out the following peculiarities of implementing international law regulations in the human rights sphere. The constitutions of those countries define the generally accepted principles and regulations of international law as the integral part of their legal systems. If an international treaty specifies the rules which are different from the rules envisaged by the law, the international treaty rules apply.

In accordance with the laws of certain CIS countries "On International Treaties of Certain CIS Countries" the provisions of officially issued inter-

national treaties of those countries, not requiring the publication of domestic acts for their application, in order to perform the other provisions of international treaties of those countries the corresponding legal acts shall be adopted.

The legislation of certain CIS countries regularizes the immediate effect principle of self-executing international treaties of those countries under the condition of their publication.

It does not directly follow from the law of some CIS countries "On International Treaties of Certain CIS Countries" that domestic acts shall be applied directly without their publication. It would be better if it specified the procedures, methods and other issues concerning the execution of international obligations. At present the Constitutional Courts of those countries have no essential practice with regard to international treaties. The Constitutional Courts of certain CIS countries practically failed to solve the cases on the merits with regard to the compliance of international treaties with the Constitutions of those countries, while those treaties or their particular provisions did not come into operation for certain CIS countries [5].

At the same time, Plenum of the Supreme Court brought some explanations concerning the application of international law by the courts ("On application by the regular courts of the generally accepted principles and norms of international law and international treaties in those countries"). According to these explanations and Constitutions of some CIS countries human rights and freedoms in accordance with the generally accepted principles and norms of international law and international treaties in those countries are directly applicable in the jurisdiction of those countries.

At first sight, that provision directly means that the generally accepted principles and norms of international law and international treaties of those countries in terms of establishment and securing human rights and freedoms apply directly within the jurisdiction of some CIS countries and accordingly they are self-executable.

However, this conclusion is not quite true for several reasons. First, a careful examination of the text of that act shows that it describes the direct effect of human rights and freedoms but not norms of international law, which is not the same, because the Supreme Court of those countries justifies the thesis of the direct effect of human rights and freedoms by not only the norms of international law but also by the provisions of Constitution of those countries, such as ensuring judicial protection of rights and freedoms, which concretize the provisions of international treaties essentially. Second, as mentioned above, a significant part of the norms contained in international human rights treaties, by its nature, cannot act directly within the jurisdiction of some CIS countries because the relevant provisions of treaties require their specification by issuing domestic act. It should be a separate deal with the issue regarding the application of generally accepted principles and norms of international law in some CIS countries. The view that the implementation of generally accepted principles and international law do not require the adoption of domestic legal acts found significant support in the science of international law [6]. One can agree with this opinion since the experience shows that as a rule generally accepted principles and norms of international law operate and are executed directly at the national level but domestic legal acts specifying them are issued quite rarely.

Thus, we can speak about a self-executability of generally accepted principles and norms of international law including the principle of universal respect for human rights and the principle of good-faith fulfillment of international obligations referred to in the mentioned act of the Plenum of the Supreme Court in some CIS countries.

At the same time it is indicated in that act that during the judicial consideration of the civil, criminal or administrative cases such an international treaty of some CIS countries is applied directly as entered into force and became binding on those countries and the provisions of which do not require the issuance of internal regulations for their application and are able to create rights and obligations for subjects of national law. According to the Plenum's opinion, features that confirm the impossibility of direct application of the international treaty provisions include, in particular, the agreement provisions for the participanting state obligations to amend the national legislation of that state [6].

Based on the above mentioned it can be concluded that the said act cannot be interpreted from the position that it as a general rule suggests a direct effect of international law on human rights and freedoms, in other words, a self-executability of such norms within the jurisdiction of those countries. Taking into account the characteristics of the international human rights, it is logical to say that most of international human rights are not self-executable.

As a lawyer and as a member of society I believe that in order to change the situation we need a strong and professional society. Then the laws will be discussed and accepted by society. The higher the society life level is, the stronger the state and the higher the society culture are.

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