# SOME CONSTITUTIONAL AND LEGAL ASPECTS OF THE CORRELATION OF DOMESTIC AND INTERNATIONAL LAW

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The Constitution of the Republic of Kazakhstan establishes that international treaties ratified by the Republic have primacy over its laws (Article 4, Part 3), states that the people adopt the Constitution, wishing to take a worthy place in the world community (preamble) [1], thereby emphasizes the commitment of Kazakhstan to universal values.

One of the important regularity of the development of modern law is to deepen the interaction of international and domestic law. The deepening interaction of international and internal law determines the internationalization of domestic law, making up one of the main trends in the development of law in the twenty-first century [2; 115].

The meaning and place of international norms in the legal system of Kazakhstan is determined by the provisions of the Constitution. The Constitution of the Republic of Kazakhstan is a document that incorporates all the most valuable, democratic, humane, which is contained in universally recognized international legal acts [3; 84].

In accordance with paragraph 2 of Art. 4 of the Basic Law of Kazakhstan, the Constitution has the highest legal force and direct effect throughout the territory of the Republic of Kazakhstan. Laws and other legal acts adopted in Kazakhstan cannot contradict it.

According to Art. 12 of the Constitution of the Republic of Kazakhstan, human rights and freedoms belong to everyone from birth, are absolute and inalienable (paragraph 2), human rights and freedoms in the Republic of Kazakhstan are recognized and guaranteed in accordance with the Constitution (paragraph 1).

The 1995 Constitution of the Republic of Kazakhstan has included international treaty obligations of the Republic in the system of law in force on its territory (Article 4, paragraph 1 of the Constitution); recognized the priority of international treaties ratified by the Republic over its laws; proclaimed that the procedure and conditions for the operation of international treaties to which Kazakhstan is a party are determined by the laws of the country; provided for the publication of all laws, international treaties to which the Republic is a party (Article 4, Clause 3 of the Constitution of the Republic of Kazakhstan).

The 1995 Constitution of the Republic of Kazakhstan established that Kazakhstan respects the principles and norms of international law, pursues a policy of cooperation and good neighborly relations between states, recognizes their equality and non-interference in each other's internal affairs, and the peaceful resolution of disputes (Article 8). Article 54, part 1, paragraph 7 of the Kazakhstan Basic Law stipulates that the Parliament, in a separate meeting of the Chambers, by sequential consideration of issues, first in the Majilis and then in the Senate, adopts constitutional laws and laws, including ratifies and denounces international treaties of the Republic.

The Russian Constitution in Art. 15 part 4 has stated that universally recognized principles and norms of international law and international treaties are an integral part of its legal system. If other rules are established by an international agreement than are provided by law, then the rules of the international agreement shall apply [4]. Thus, the Constitution of the Russian Federation includes universally recognized norms and principles of international law and international treaties of the Russian Federation in the national legal system. However, it does not establish a hierarchy of these acts within the legal system itself. In part 4 of Article 15 of the Constitution of the Russian Federation refers only to the priority of the rules established by the international treaty of the Russian Federation over the rules stipulated by law.

The modern constitutional process is characterized by active integration processes in the field of interaction between international and domestic law. The interpenetration of the institutions of international and national law, including constitutional law as a special kind of

domestic law, have two aspects: 1) the ratio of international and domestic law; 2) the assignment of part of sovereign state powers to supranational organizations [5; 38].

In connection with the internationalization of many areas of public life, the strengthening of integration processes, the establishment of international human rights standards and the international protection of these rights, there is an increase in the use of such sources of constitutional law as international legal acts - treaties, conventions, declarations, and acts of supranational organizations (EU ) relating primarily to human rights.

As known, the norms of international law operate in a space that is regulated to varying degrees by the norms of domestic law. In this case, competition of norms and conflicts of application of law may arise. For objective and subjective reasons, the norms of national legislation can more adequately approach the regulation of specific legal relations than the norms of international law. This may be due to various kinds of factors: features of national development, historical traditions, a more perfect mechanism for regulating the norms of national law due to its later adoption, etc. Therefore, the question of the incorporation of a particular norm of international law into domestic law should be decided individually, with reference to each specific legal act. At the same time, the national legal system should establish such general mechanisms in order to avoid possible conflicts and various approaches to regulating homogeneous legal relations.

Two main positions on this issue can be distinguished. The founder of the first approach is H. Kelsen. Its essence lies in the rule of international law, after which follow the norms of the Constitution, then the norms of constitutional law, after them - laws, etc. Another approach involves the primacy of the Constitution in relation to universally recognized norms and principles of international law.

The constitutions of many foreign states enshrine the principle of supremacy of international law over domestic law. For example, Article 5 of the 1991 Constitution of the Republic of Bulgaria establishes: “International treaties ratified in the constitutional order, promulgated and entered into force for the Republic of Bulgaria, are part of the domestic law of the country. They have priority over those norms of domestic law that contradict them” [6 ].

The Constitution of the French Republic in Section VI “On International Treaties and Agreements” states that treaties or agreements duly ratified or approved have force exceeding the force of domestic laws from the moment of publication, subject to the application of each agreement or contract by the other party (Article 55 ) [7]. The Constitution of Spain proclaimed that international treaties lawfully concluded and officially published in Spain form part of its domestic law. Their provisions may be repealed, amended or suspended only in the manner specified in the treaties themselves, or in accordance with the general rules of international law (Article 96/1) [8 ].

In accordance with the Dutch Constitution, international treaties are considered directly applicable law and take precedence over national law. So, according to article 93 of the Dutch Constitution, the provisions of international treaties and acts of international organizations, which are general regulatory and binding on all persons, are subject to application only after their publication [9]. Recognition of the priority of international law over domestic law has found expression in the Constitution of the Russian Federation. Part 4 of Art. 15 of the Constitution states that “universally recognized principles and norms of international law and international treaties of the Russian Federation are an integral part of its legal system. If other rules are established by international treaties of the Russian Federation than those provided by law, then the rules of the international treaty shall apply ” [4 ].

At the same time, provisions are increasingly being included in the constitution of foreign countries aimed at creating a mechanism to ensure compliance of international treaties with the national constitution at the stages of their conclusion, ratification and enforcement. Thus, the Spanish Constitution also determines that in order to conclude a number of international treaties or agreements, state bodies must first obtain the permission of the General Cortes, including

treaties or agreements affecting the amendment or repeal of any law or the adoption of legislative measures for their execution (Art. 94/1) [8 ].

Constitution of the Republic of Poland in Art. 89 part 1 contains a provision stating that "ratification by the Republic of Poland of an international treaty and its denunciation require the prior consent of the Sejm expressed in law, if the treaty concerns: 1) peace, union, political agreements or military arrangements; 2) civil freedoms, rights or obligations enshrined in this Constitution; 3) membership of the Republic of Poland in an international organization; 4) significant burden of the state financially; 5) issues regulated by law, or those on which the Constitution requires the publication of a law. " In Art. 90 part 1 provides that the Republic of Poland may, on the basis of an international agreement, transfer to the international organization or international body the competence of public authorities in certain cases. [10]

Many new foreign constitutions contain a provision that the conclusion of a treaty that includes rules that are contrary to the constitution can take place only after a corresponding review of the constitution. For example, the Spanish Constitution of 1978 contains the norm that "the conclusion of an international treaty containing provisions contrary to the Constitution must be preceded by a review of the latter" (Article 95 of the Spanish Constitution) [ 8]. This provision is followed by states in which it is not constitutionally fixed.

The French Constitution finds expression the idea of harmonizing national sovereignty with the provisions of an international legal act or treaty. The constitution expressing the sovereignty of the state contains a list of treaties and agreements that can be ratified or approved only on the basis of law. If the Constitutional Council declares that any international obligation contains provisions that are contrary to the Constitution, then permission to ratify or approve it can be given only after the revision of the Constitution (Article 54) [ 7].

The provisions on the interaction of the two legal systems of domestic and international law were enshrined in the Constitutions of the Federal Republic of Germany, Austria, Portugal, Italy. So, the Federation can legislatively transfer the supreme power to interstate institutions (Article 24/1 of the Basic Law of Germany); general rules of international law are an integral part of Federation law, they have precedence over laws and directly generate rights and obligations for residents of the federal territory. Article 25 of the German Basic Law states that "universally recognized norms of international law are an integral part of federal law. They take precedence over laws and give rise to rights and obligations directly for persons residing in the territory of the Federation. [11].

According to article 9-1 part 1 of the Austrian Constitution, "universally recognized norms of international law act as an integral part of federal law", and part 2 of this article says: "Based on a law or a state agreement, certain sovereign rights can be transferred to interstate institutions and their bodies" [12]. In accordance with article 10, part 1 of the Italian Constitution, "the rule of law of Italy is consistent with generally recognized norms of international law" [13].

Foreign legislation also establishes the possibility of parallel application of international law and national law. For example, the Portuguese Constitution of 1976 establishes that the unconstitutional in terms of substance or form nature of international treaties, does not impede their observance by Portugal. Thus, Article 277 part 2 of the Constitution of Portugal establishes: "Organic or formal unconstitutionality of international treaties does not prevent their application in the domestic legal system of Portugal ..." [ 14].

In contrast to the above, new constitutions, the basic laws adopted at an earlier stage of development differently regulate the issue of the correlation of international and national law. So, article 6 of the US Constitution, adopted in 1787 and still in force, establishes the priority of the US Constitution and laws throughout the country, however, along with treaties concluded by the federal government [15]. Thus, the US Constitution sets its standards above the treaties. Moreover, this norm has been repeatedly confirmed in decisions of the US Supreme Court [16; 14].

With regard to international treaties, the Constitutions of many foreign countries establish the priority value of an international treaty in influencing domestic relations, an international

treaty is included as an integral part of the country's legal system. For example, the US Constitution proclaimed an international treaty part of the country's law. Section 6 also provides that «this Constitution and the laws of the United States issued to enforce it, as well as all treaties concluded or to be concluded by the United States, are the highest laws of the country, and judges of each state are required to comply with them , at least in the Constitution and laws of individual states there were conflicting resolutions» [15].

The domestic law of foreign states makes a distinction between existing generally accepted principles and norms of international law in the form of custom, on the one hand, and treaties on the other. The generally recognized principles and norms of international law in the manner of general transformation are included in the internal law of the country. Because of their universality and the objective need for their conflict with national law, they rarely arise. Therefore, states pay particular attention to the status of treaty norms in national law [17; 226]

In some foreign countries, an international legal act cannot be a source of national law, including constitutional law. Its application requires implementation, that is, the publication of the corresponding law (for example, the Constitution of India, Malaysia). Thus, according to Article 76 par.1 a) of the Constitution of Malaysia, the Parliament may adopt laws with the aim of fulfilling an agreement, agreement or convention between the Federation and another state, a decision adopted by an international organization of which the Federation is a member [18]. In accordance with Article 253 of the Constitution of India «Legislation for the Implementation of International Agreements», Parliament has the right to issue any law in respect of all or any part of the territory of India in connection with the implementation of any contract, agreement or convention with any other country or countries or any decision adopted by an international conference, international association or other body [19].

The globalizing world in its legal development is characterized by two interconnected processes: the internationalization of domestic regulation, especially in the humanitarian sphere, and the tendency to constitutionalize international relations. The trend of constitutionalization of international relations reflects the natural processes of formation along with the national also transnational (regional, continental and even global) constitutionalism, the legal basis of which are peremptory norms of international law, which have been universally recognized [20; 6].

An analysis of the content of the constitutions of foreign countries and the Basic Law of Kazakhstan shows that the Constitutions reflect progressive trends in the development of constitutional law, including the provision of international law with priority over domestic laws. The solution of the issue of primacy and direct effect of international law is in the competence of national law. Constitutional law is the basis of the legal system of the state. The norms of the Constitution have the highest legal force in the system, the primacy in relation to all other norms.

The Constitution of the Republic of Kazakhstan is the legal basis for the formation of national legislation focused on universally recognized norms of international law. Domestic Basic Law as a whole corresponds to the world trends in the development of constitutional law, due to the general globalization and internationalization of law. The Constitution of Kazakhstan laid a good foundation for the improvement of the legal system of the country, including taking into account international law. In order to give special status to the universally recognized principles and norms of international law on human rights and freedoms, it would be possible to include in the Constitution of the Republic of Kazakhstan the provision that the rights and freedoms of a person and a citizen in the Republic of Kazakhstan are recognized and guaranteed in accordance with generally recognized principles and norms of international law and in accordance with Constitution.

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