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International standards as source of the national right of the CIS countries

In the presented article questions of a role of the universally recognized norms of international law in system of the national right of the countries of participants of the CIS are considered, the characteristic of their contents and feature is given. The carried-out comparative analysis of the constitutional norms of these countries the fixed principle of rule of the Constitution and a primacy of the international standards, new approaches to research of this problem gave the chance in to formulate to authors conclusions and regulations on this topical issue.

Key words: international law, international treaties, national law, sources of law, Constitution, implementation, implement, the principle of the supremacy of the Constitution, the primacy of international standards.

The accurate reference point on international law in the course of preparation of the modern laws governing the main basic public relations more than once was stated in the speech by the leader of Kazakhstan. As it is told in the Concept of legal policy of the Republic of Kazakhstan for the period from 2010 to 2020 No. 858 signed with the Decree of the President of the Republic of Kazakhstan of August 24, 2009 «For ensuring compliance of the national right to new calls of time, increases of its competitiveness further improvement of rule-making and law-enforcement activity of the state is necessary, having finally exempted from the legal doctrines which aren't answering to prospects of the 21st century» [1].

Therefore the Kazakhstan legal system has to be capable to compete as equals in questions of convenience of application and reliability of protection of the rights with the legislation of the developed countries of the world. General globalization and growth of the world competition let to know to participants of the world community need of modernization of legal systems and their maximum approach to needs and needs of people and interests of investors. Only the competitive legal system can attract investments into the country, promote realization of the progressive scientific and technical ideas, help growth of welfare of people, and increase the level of sense of justice and legal culture of citizens.

One of the directions of improvement of legislative base in modern conditions it is the further work connected with reduction of laws in compliance with the international standards. By N.B.Azimov's sight, the subsequent development of the legislation can be successfully realized only at creation of fundamental theoretical base and uniform methodology of transformation and implementation of the international legal acts on the basis of mutual cooperation of the states and the general principles of international law, thus introduction of international legal norms and standards has to be carried out taking into account national interests of the country, is consecutive and comprehended, to be followed by systematic monitoring of performance of each country of the assumed international obligations [2; 4].

In this regard relevance of inclusion of provisions of international treaties in norms of the national right by their subsequent implementation increased. The effective implementation mechanism would facilitate activities of government bodies of the power for timely development and adoption of national legal acts in pursuance of the international obligations of the state, significantly would reduce risk of international legal responsibility of the state for untimely and undue implementation of these obligations [3; 3]. In this context

the great interest is presented by both the international and interstate procedures of coordination, acceptance and the entry of treaties into force, and also the subsequent their practical realization.

The principles of international law at the heart of which, the conventional universal values as freedom, democracy, respect of the rights and freedoms of the person lie, ideas the defining essence, the contents and an order of construction and application of norms of modern legal system are understood. According to the specified world values, fixed in the Charter of the UN, the Universal declaration of human rights, the International Covenant on Civil and Political Rights, the International covenant on the economic, social, cultural rights, Conventions of Council of Heads of states of the Commonwealth of Independent States «About the rights and fundamental freedoms of the person», the European convention «About Protection of Human Rights and Fundamental Freedoms» Protocols to it, Decisions of the European Court of Human Rights and other regulations of the Council of Europe in many countries, are defined bases and an order of criminal liability.

The basic principles on the basis of which activities of the state for criminal prosecution are conducted: legality, equalities of citizens before the law, guilty responsibility, justice, humanity.

All these principles qualitatively differ from each other, the independent contents, thus they are interconnected, and render equal interaction on formation of national precepts of law, and their actions.

The part which to be assigned to international treaties in national legal system of our state is so great that demands an adequate legal regulation [4; 69]. For clarification of a role of international treaties which a component of national legal system of the Republic of Kazakhstan, it is necessary to carry out the analysis of the constitutional norms making the leading value to international legal provisions.

Recognition by our country of supremacy of international law in the general system of the right is fixed in Ch. 3 Art. 4. of the Constitution of the Republic of Kazakhstan in the following treatment: «The international contracts ratified by the Republic have a priority before its laws and are applied directly, except cases when follows from the international treaty that its application requires the publication of the law». That gives the grounds to draw conclusions on a clear advantage of the international standards before postulates of the national legislation. However, it is impossible to claim that all international standards and the principles can have impact on Kazakhstan. Only standards of the international treaties ratified in the territory of the Republic of Kazakhstan and that which participant is, it is possible to consider obligatory for the country.

Meanwhile, it is necessary to tell that the norm of international law (contractual or usual) will find character obligatory only on condition of a consent of the state as sovereign participant of the international relations and main subject of international law with this norm and recognition of it legally obligatory for itself.

According to Zh.Kegembayeva «standards of international treaties take a high place in hierarchy of legal acts, conceding on the validity only to the Constitution of the Republic of Kazakhstan» [5; 19]. As the Constitution possesses the highest validity which expresses its place in hierarchy of the legal acts existing in the Republic of Kazakhstan and also establishes a priority of action and application of the constitutional norms. Exclusive properties of the Constitution of the country as supremacy, direct action and the highest validity are the main kernel of this act as main source of the right defining it as the regulatory legal act taking an independent and special place in legal system of any modern state.

Nevertheless, there can be also other opinion on rule of the Constitution of the country or a primacy of the international acts. So, according to L.M.Entin, the postulate that «the constitution is the highest normative legal act on the validity to which there correspond or have to correspond all other normative legal acts, from now on has to be perceived with some reservations, and often and in general to be called into question» [6; 21] if standards of international treaties are norms of direct action and possess supremacy in relation to norms of the national right even if it is about constitutional precepts of law.

As it is specified in Art. 53. of Vienna convention «About the Right of International Treaties»: the peremptory norm of the general international law is norm which is accepted and admits the international community of the states in general as norm the deviation from which is inadmissible and which can be changed only by the subsequent norm of the general international law [7] having the same character, this rule turns out has a binding character for the country which, recognized the contract and only international law in forces to cancel this decision.

The resolution of the Supreme Council of the Republic of Kazakhstan of March 31, 1993 «About accession of the Republic of Kazakhstan to the Vienna convention on the right of the international contracts of 1969» recognizes the right of international treaties in the territory of the Republic of Kazakhstan. This we have to recognize Art. 26. Rasta sunt servanda of the Vienna convention on the right of the international contracts where is stated, «Each existing contract is obligatory for its participants and has to be carried out hon-

estly by them», corrected Art. 27. «the participant can't refer to provisions of the internal law as a justification for non-performance of the contract by it» [7] which distinctly answers questions of a ratio of the internal law and the international treaty.

That's why it is necessary to find out concerning what it is standard — legal acts of the Republic of Kazakhstan the international contracts have advantage. Art. 4 determining standards of the Constitution, laws corresponding to it, other regulations, the international contractual and other obligations of the Republic, and also standard resolutions of the Constitutional Council and Supreme Court of the Republic by the law in force in the Republic of Kazakhstan also in ch. 2 proclaims the highest validity of the Constitution of RK and its direct action in all territory of the Republic.

For explanation of a place and a role of international treaties in legal system of various countries it is necessary to define first of all interaction of norms of international law with the national right of the states. General globalization of the world community, consolidation of interdependence between the countries cause the necessity of that their legal systems were compatible and capable to interact with each other and with global system in general as its components as there can be problems in the course of interaction of the international and internal law.

If to analyze standards of the Constitution of the countries of participants of the CIS on a role of international law in the country, it is possible to receive ambiguous positions on an occasion of fixing and a statement in standards of the constitution of the principle of a primacy of international treaties. We think and is interpreted this principle in laws the different countries differently.

The Republic of Kazakhstan after recognition of the highest force of the Constitution in the territory of the country in ch.2 Art. 4 of the Constitution, a trace in ch.3 the same article declares that, the international contracts ratified by the Republic have a priority before its laws and are applied directly, except cases when follows from the international treaty that its application requires the publication of the law. It suggests an idea of a priority of these contracts over all legal system where the hierarchy is headed by the Constitution of the country.

Almost same situation is fixed in Art. 6 of the Constitution of Turkmenistan of May 18, 1992 No. 691-XII which says Turkmenistan, being the full subject of the world community, adheres in foreign policy of the principles of a constant neutrality, non-interference to internal affairs of other countries, refusal of use of force and participation in military blocks and the unions, assistance to development of peace, friendly and mutually beneficial relations with the countries of the region and the states of the whole world Turkmenistan recognizes a priority of the universally recognized norms of international law. If the international treaty of Turkmenistan established other rules than provided by the law of Turkmenistan, rules of the international treaty» are applied [8].

Except Turkmenistan and Kazakhstan, any other of the countries of participants of the CIS in the constitution doesn't claim about a priority of the international treaties ratified by the Republic, and their direct application is so certain. From the above-stated formulation it is possible to judge the unconditional force of the international standards.

The constitution of the Russian Federation in ch.4 Art. 15 specifies that «The conventional principles and norms of international law and the international contracts of the Russian Federation are a component of its legal system. If the international treaty of the Russian Federation established other rules than provided by the law, rules of the international treaty» are applied [8]. Art. 10 of the Constitution of Tajikistan says «The international legal acts recognized by Tajikistan are a component of legal system of the republic. In case of discrepancy of laws of the republic to recognized international legal acts standards of international legal acts» are applied [8].

The constitution of the Kyrgyz Republic in ch.3 Art. 12 also established that, «the international contracts and agreements which came in the order established by the law into force which participant is the Kyrgyz Republic, and also the conventional principles and norms of international law are a component of legal system of the Kyrgyz Republic» [8]. Also in Art. 6. of the constitution of the Republic of Armenia it is told, «The international contracts are a component of legal system of the Republic of Armenia. If other norms are established by the ratified international treaties, than what are provided by laws, are applied these norms» [8].

These countries allocate for international treaties a certain place in legal system of the country. If the Constitution of the Russian Federation, Armenia and Tajikistan allows reservations about preferences to the international standards in case of discrepancy of laws of the country to recognized international legal acts, in the Constitution of the Kyrgyz Republic about it anything to have a good long talk and it is standard of the

constitution is limited only to recognition of the conventional principles and norms of international law a component of legal system of the Kyrgyz Republic.

Meanwhile inclusion in the Constitution of the conventional principles and norms of international law in legal system of the country obliges all public authorities to follow these norms and the principles. This rule belongs, including, and to bodies and the officials who are carrying out preliminary investigation and justice. Lack of the formalized definition of concept of the conventional principles and norms of international law and their list represents big difficulties for practical workers who traditionally got used to be guided by exclusively national industry legislation [9; 13], and conducts to uncertainty in practice in, in what documents the conventional principles and norms of international law are formulated, whether the positions of the European Court of Human Rights stated in decisions on concrete affairs, what mechanism of application of provisions of the Convention revealed in resolutions of the European Court in criminal trial concern to that.

First what to understand as the conventional principles of international law when one scientists consider that the conventional principles of international law contain in the Charter of the UN, pacts on human rights and the citizen, in documents of OSCE, other international structures [10; 92], others refer to them and norms of international law such principles and norms which admit within the country and work in the form of the international convention, or the international custom recognized as the civilized nations, or the judgment made by the International Court of Justice on business, one of which parties is the concrete state.

Because of ambiguity of opinions among scientists apropos the content of the conventional principles of international law, we think very vaguely, and to define a place of international treaties which are a component of legal system of any country, especially the conventional principles of international law.

The question and of a spontaneity of action of international legal norms which acts as a subject of basic discussion in domestic jurisprudence of these countries seems disputable. Supporters of direct action and its categorical opponents disperse not so much in approach to a role of international legal norms, how many in interpretation of the phenomenon «direct application». The comment of the Constitutional Council of the Republic of Kazakhstan of November 5, 2009 No. 6 according to the item of 3 St. 4 in relation to acts of the international organizations created according to the international treaties ratified by the Republic of Kazakhstan and their bodies it means that if in such international treaty is specified that the called acts have character, obligatory for the State Parties, the Party, its government bodies, officials are obliged to carry out all necessary organizational and legal actions directed on execution of such requirement including reduction in compliance of acts of the national legislation with them [11].

The resolution of the Constitutional Council of the Republic of Kazakhstan of October 11, 2000 N 18/2 «About official interpretation of point 3 of article 4 of the Constitution of the Republic of Kazakhstan» says, «from sense of the given standard of the Constitution follows that before laws of the Republic only the international contracts ratified by Kazakhstan can have a priority. Direct application of such international treaties having a priority before laws of the Republic doesn't mean cancellation of standards of current laws by them. A priority before laws and direct application of the ratified international treaties in the territory of the Republic assume situational superiority of standards of such contracts in cases of collisions with standards of laws» [12].

In Constitutions of the CIS countries rules of relationship with norms of international law are established, without limiting the sovereign right of the state for implementation of policy of management in the state. The present has to mean any country the participant of the international treaty recognizes primacy of the general international standards, consolidating thus realization of the sovereign right.

Direct application shouldn't be interpreted as action of norms of international law out of the constitutional bases and requirements of the national right and contrary to of Action of the international standards assumes the activity of national legal system connected with execution of requirements of international law including reduction in compliance of acts of the national legislation with them. It is necessary to tell, at emergence of a collision between the international treaty and the Constitution of the specified countries, in particular the Republic of Kazakhstan, the rule about the highest validity of the

Constitution because the international contracts are a component of legal system of the state will work, and within this system there can't be acts standing above the Constitution of the country.

We can observe fixing of a priority of norms of international law in this foreshortening in the Constitution of Republic of Belarus which in Art. 8 recognize a priority of the conventional principles of international law and provide compliance to them legislations. As for the general norms of the international common law, they are obligatory regardless of will of our state, the Belarusian scientist A.B.Barbuk considers [3; 4],

moreover, discrepancy of the international obligation to a peremptory norm of the general international law (*jus cogens*) is the basis for recognition of the contract insignificant (Art. 53 of the Vienna convention).

It is very careful and flowed round approached the matter in constitutions of the Republic of Moldova, the Azerbaijan Republic and Uzbekistan. The republic of Moldova takes obligations only to observe the Charter of the United Nations and contracts in the Art. 8, it is one of which parties, to build the relations with other states on the conventional principles and norms of international law.

Norms establishing a primacy of the international precepts of law over national legal system of Moldova aren't stated in the constitution at all. This constitution claims only about need to build the relations with other states on the conventional principles and norms of international law, and also undertakes to observe the Charter of the UN. Whether means it, if superiority of the international standards over legal system isn't specified in the constitution, they can be ignored, or we can assume that the basic principles which are stated in the charter of the UN on what all international law is based and the relations will have the highest forces in this country [8]. We think such understanding of Art. 8 of the Constitution of the Republic of Moldova it is admissible.

In the Azerbaijan Republic the government is limited in internal questions only to the right, in external questions — only the provisions following from international treaties which party is the Azerbaijan Republic. The Azerbaijan Republic builds the relations with other states on the basis of the principles provided in the universally recognized international legal norms it is told in Art. 10 of the Constitution of this country [8]. The basic law of the Azerbaijan Republic recognizes a role of the conventional principles of international law only concerning external relations. It means domestic policy of the country is guided only by norms of the national right. However, having analyzed contents of some laws of Azerbaijan we can approve standards of these laws are based on the basic general principles of international law. For example Art. 4. The criminal code which fixed the general provision that «The present Code is based on the principles of legality, an equality before the law, responsibility for fault, justice and humanity» [13]. Further this criminal code lists in the Art. of Art. 5, 6, 7, 8, 9, and gives definition to these principles.

The constitution of the Republic of Uzbekistan concerning the general norms of international law adheres to the same position, there is no confirmation about a place of these principles in national system of the right. This country very much frostily approaches questions about relationship and ratios of the international and national law, only proclaiming the Republic of Uzbekistan the full subject of the international relations where its foreign policy proceeds from the principles of sovereign equality of the states, non-use of force or threat of force, inviolability of borders, peaceful settlement of disputes, non-interference to internal affairs and other conventional principles and norms of international law [8], is told in Art. 17 of the Country constitution. It is quite enough of it, for reduction of the national legislation in compliance with the international requirements.

Having analysed the regulations on a role of the universally recognized norms of international law fixed in constitutions of the CIS countries, we come to the following conclusions. First, these rules are formulated in Basic laws of the CIS countries differently in this connection, it is very difficult to understand sense specified unambiguously. The analysis of the constitutional legislation of the State Parties of the CIS shows that the states of the Commonwealth apprehended a world tendency of development of the international contract law, having fixed in constitutions and special laws basic provisions of the Vienna convention, having created thereby a legal basis for effective international and contractual cooperation.

This model speaks about necessary general implementation of norms of international law on which legal regulation of the states in intra national regulatory base within national legal system is based that will give the chance to the state on the basis of norms of international law to create progressive legal system.

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Халықаралық нормалар ТМД елдерінің ұлттық құқығының қайнар көзі ретінде

Мақалада халықаралық құқықтың жалпы танылған нормаларының ТМД-ға қатысушы-елдердің ұлттық құқығы жүйесіндегі рөлі туралы айтылған, олардың мазмұны мен ерекшеліктеріне сипаттама берілген. Конституция үстемдігі қағидасы мен халықаралық нормалар басымдылығы қағидаларын бекіткен осы елдердің конституциялық нормаларына жүргізілген салыстырмалы талдау және осы мәселелерді зерттеуге арналған жаңа бағыттар авторларға осы өзекті сұрақтар бойынша өз қорытындылары мен тұжырымдарын жасауға мүмкіндік берді.

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Международные нормы как источник национального права стран СНГ

В статье рассматриваются вопросы о роли общепризнанных норм международного права в системе национального права стран-участниц СНГ, даются характеристика их содержания и особенности. Проводимый сравнительный анализ конституционных норм этих стран, закрепивших принцип верховенства Конституции и примата международных норм, новые подходы к исследованию данной проблемы дали возможность сформулировать авторам выводы и положения по этой актуальной проблеме.

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Репозиторий Қарғу