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Legal transformations in the Ukrainian legal system under the influence of international law

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Abstract

The article is devoted to a topic as topical as the legal transformations in the Ukrainian system under the influence of international law. Therefore, the aim of the article is to discuss the theoretical and practical aspects of the study of the impact of international law on domestic law, as well as to identify the differences and similarities between international law and Ukrainian law in the specific field of criminal and civil law. The methodological basis of the study consisted in the use of the system-structural method, which made it possible to determine the place of international legal norms in the system of national legislation and, also, the comparative method of international and Ukrainian legislation in force. In the main results obtained, it is revealed that the transformation of Ukrainian legislation is carried out mainly under the influence of Western globalization, which implies the transformation of a certain international law. It was concluded that, in the legal sphere of Ukraine, international agreements have been greatly influenced by the transformation of international law through the application of Ukrainian law through a process of legal synthesis.

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Keywords: legal transformation; legal harmonization; law enforcement; rules of international law; comparative law.

Transformaciones en el sistema jurídico ucraniano bajo la influencia del derecho internacional

Resumen

El artículo está dedicado a un tema tan actual como las transformaciones jurídicas en el sistema ucraniano bajo la influencia del derecho internacional. Por lo tanto, el objetivo del artículo es discutir los aspectos teóricos y prácticos del estudio del impacto del derecho internacional en el derecho interno, así como identificar las diferencias y similitudes entre el derecho internacional y el derecho ucraniano en el campo específico del derecho penal y civil. La base metodológica del estudio consistió en la utilización del método sistema-estructural, que permitió determinar el lugar de las normas jurídicas internacionales en el sistema de legislación nacional y, asimismo, el método comparativo de la legislación internacional y ucraniana vigente. En los principales resultados obtenidos se revela que la transformación de la legislación de Ucrania se lleva a cabo principalmente bajo la influencia de la globalización occidental, que implica la transformación de cierto derecho internacional. Se llegó a la conclusión de que, en la esfera jurídica de Ucrania, los acuerdos internacionales se han visto muy influidos por la transformación del derecho internacional mediante la aplicación del derecho ucraniano mediante un proceso de síntesis jurídica.

Palabras clave: transformación legal; armonización jurídica; aplicación de la ley; normas de derecho internacional; derecho comparado.

Introduction

One of the central places in modern law is the issue of understanding and significance of the implementation of international law norms in domestic legislation. The problematic issue of this sphere is considered the presence of conflicts, similarities, and differences of interpretation of such norms, their understanding, and the need for implementation in the legislation of the signatory countries of international norms through appropriate treaties of an international character. Therefore, the coverage of all aspects of such legal phenomena as the legal transformation of international agreements should contribute to the understanding of all aspects of international law norms and improvement of ratification in domestic law.

1. Purpose

The purpose of the article is to summarize the theoretical and practical aspects of the impact of international law norms on domestic Ukrainian legislation, as well as to identify the differences and similarities of international law norms with Ukrainian legislation on the example of criminal and civil law in Ukraine. The aim was also to identify the existence of existing problematic aspects in the sphere of criminal law and the question of the need for the adoption of domestic special laws for the implementation of international law norms.

2. Article Methodology

To clarify the essence of legal integration in law, it is necessary to disclose the ways that are used to regulate integration (international-legal) relations. They include harmonization, implementation (reception, unification, incorporation). The methodological basis of the study consisted of the system-structural method, which allowed to determine the place of international legal norms in the system of domestic legislation and the comparative method of current international and Ukrainian legislation (Conventions, Laws, etc.).

3. Bibliographic overview

Efforts of modern jurists are directed to the consideration of the above question on the transformation and harmonization of Ukrainian legislation. Among such there are works.

In particular, Bronevytska and Serkevych (2020) analyzed more than seventy international treaties and determined that almost all treaties are not self-executing. They point to certain technical problems on the part of the Ukrainian state represented by the executive authorities. A similar opinion on this issue is held by scholar Sharmar, who notes that when implementing certain provisions of the acts of international legal nature, the domestic legislator does not necessarily take into account the specifics of the Ukrainian legislation on criminal liability.

4. Study results

The field of international law has been studied as a science and as an academic discipline for decades. Today, we can clearly say that it is a legal field, which aims to implement the regulation of both private and public law at the international level.

An important point is that the influence of international law is a significant aspect of the formation of legal systems in different states (Kvitka *et al.*, 2021).

This sphere of influence of such norms has been studied by scholars of different countries for many years and is quite global and multifaceted (European Commission for democracy through law, 2014).

The study of this issue of the influence of international law norms on domestic law is very relevant today and for Ukraine because the domestic legal system has been undergoing significant changes at the legislative level for about 30 years.

First of all, it should be noted that examining this issue of transformation of the legal system, it should be said that in the theory of international law

there are such concepts as “legal globalization” and its macro-level and micro-level. It is clear that at the macro level the global legal system is formed, hence at the macro level - the national one (Biriukova, 2018).

It should be noted that the transformation of domestic legislation is carried out primarily under the influence of the process of globalization, thanks to which it is possible to learn more deeply the essence of legal norms, as well as to see their further perspective (Marks, 2019).

It is considered that the legal system at the national level is a system of law, which reflects the national cultural, political, and socio-economic peculiarities. Here the special importance of such a legal system is highlighted, where there are signs of individuality, unity of such a society (Santos, 2018).

Note that, according to domestic scientists, a significant reason for the cardinal change in the sphere of Ukrainian legislation was the fact that there was a significant conscious transition of society to the modern state of the law, aimed at European standards. This happened due to the orientation based on European models of legal consciousness (Drapohuz, 2015).

Therefore, the activity of states in the international arena and participation in solving certain international problems occurs due to the available political relations and the signing of international treaties (Aliyev, 2016).

In addition, in the theory of international law, the definition of the processes of harmonization, convergence, and approximation deserves special attention. These terms are closely related to the process of transformation of the legal system itself.

Thus, harmonization of law should be understood as the goal of unification and harmonization to a common understanding of the entire

legal framework and legal institutions. Convergence should be understood as a certain process of convergence or unification, which results in the convergence of law-making, law-conscious, and law-enforcement activities to harmonize the legal system (Mihajlenko, 2014).

According to the scholar Kresin, since the end of the twentieth century, there has been a transformation of society at the global level in the world. Due to this, there is an impact on all kinds of spheres of human social life. Such as spiritual, economic, political, and legal. Thus, one of the topical issues is the problem of transformation of legal norms of international law, which has an important connection with the process of integration of legal systems (Kresin, 2007).

Let us note that in the scientific legal space there are two types of transformations of international legal norms, namely:

- **General and special**

The essence of the General is the introduction in a certain state of a general norm, due to which the norms of international law have valid legal force within a given state. At the same time, the notion of special transformation should be understood as a process by which a state gives to certain international legal norms the force of domestic action, reproduced in a law or regulation, which is adapted to the norms of national legislation (Usenko, 2009).

Such transformations are carried out directly, that is, through the application of international legal norms within national law, for example, when expressed through rules established by the constitution or laws (Van Loo, 2021).

- **This form of embodiment of the rules of law is called direct transformation**

For example, Article 9 of the Constitution of Ukraine states that international agreements should be regarded as part of national legislation Constitution of Ukraine, 1996, Art. 9.

It should be noted that the direct effect of such norms is authorized at the level of domestic legislation. However, it should be said that there is another form of the above transformation - incorporation, providing that the norms of international law are considered part of the legislation of the country and are implemented in domestic law. Such an application is characteristic of such countries as Austria and Germany.

It should be noted that there is another type of transformation, as opposed to direct, namely indirect. That is when for the recognition of certain international legal norms, it is necessary to adopt or issue a national normative legal act - a law, a regulation, etc. For example, in France, this

practice is typical for the recognition of international agreements. Article 53 of the Constitution of the French Republic says that all financial or trade treaties of an international nature are considered ratified in the territory of France when the law is adopted at the national level and are considered valid after the adoption of the law and ratification (Haustova, 2016).

We consider it necessary to highlight the main significant changes (transformations) that occurred in Ukraine under the influence of international law norms on the example of several domestic branches of law.

But first, it should be noted that the Ukrainian modern legal system today is at the stage of development, which is called information, which means obtaining a new sustainable and coherent legal system. Global threats and challenges, as well as advantages, are taken into account here. At this stage, an important aspect is not only certain individual elements of the legal system and change in the legal system as a whole - the global transformation. That is changes in external and internal relations (Haustova, 2014).

Summarizing the above opinion, we should mention the available modernization in Ukraine, which is expressed in modern management schemes of social and legal life, the purpose of which is primarily the implementation of the principles of legality, justice, and equality in society. In the scientific community, certain elements of such modernization are distinguished.

We consider it necessary to consider them because of the importance of understanding the transformation and implementation of international law norms into domestic law. So, it is considered that the constituent elements of the development of legal modernization are:

1. Extraordinary development of law based on the constitutional principles of the rule of law and human rights.
2. The process of differentiation and renewal of Russian law through the configurations of economic development.
3. The process of humanization and rationalization of the sphere of criminal and penal law.
4. The process of optimization of judicial proceedings.
5. Development of juridical science and education.

It should be noted that an important aspect of the way of modernization of the Ukrainian legal system is considered the adoption of the Concept of legal policy, which is carried out with globalization, which provides for the transformation of certain international legal norms into Ukrainian legislation.

Such a Concept implies not only modernization of the legal system, but also the introduction of new communicative, integration relations, the establishment of an optimal balance in the sphere of international law relations, as well as transition from the post-Soviet system to a high level of legal consciousness, to a globalized legal system aimed at European and world postulates and principles of law, norms, and standards. Above all, it is also about protecting national interests and confronting big threats and challenges (Haustova, 2016).

Summarizing the above information on the importance of implementation of international law norms, in our opinion, it should be noted the consideration of specific examples of legal transformation in the national legal system, carried out under the influence of international law norms on the example of certain branches of domestic law.

As part of our study, we propose, first, to consider this issue regarding international implementation on the example of Ukrainian criminal law.

First of all, it should be noted that the most accurate definition, which interpreted the meaning of the concept of “implementation”, is considered a certain process, which allows the implementation of international legal norms on the territory of the state, in the sphere of national law with its help and according to a certain procedure, as well as provided through organizational and legal activities of state bodies and aimed at the actual implementation of international obligations of the state (Batyř, 2014).

The above Law of Ukraine “On International Treaties of Ukraine” establishes that international treaties of Ukraine are part of the national legislation, subject to ratification by the legislative body. However, here a number of questions of a more detailed and technical nature arise.

Research of such interpretation was conducted by scientist Bronevytska, who in her work analyzed more than seventy international agreements and determined that almost all agreements are not self-executing. That is, it means that the provisions regarding international agreements, which are enshrined in domestic laws on the binding nature of their implementation in Ukraine, in practice cannot be unambiguously implemented due to certain technical problems. For example, it is difficult to understand that certain norms of international law establishing criminal liability for a certain list of crimes can be implemented and act without implementing such norms in the Ukrainian criminal code (Bronevytska and Serkevych, 2020).

Thus, to recognize the acts or omissions recommended in international treaties, it is necessary to make certain changes in the criminal procedure legislation and to assign a measure and type of punishment for such a crime in the domestic law, because none of the international treaties under consideration indicates a specific measure. punishment. It is believed that this should be the prerogative of each state individually (Pidubna, 2016).

A similar opinion on this issue is held by scholar Sharmar, who notes that when implementing the implementation of certain provisions of the acts of international legal nature, the domestic legislator does not necessarily take into account the specifics of Ukrainian legislation on criminal liability. With this in mind, we can give the following example.

In 2006, namely on October 18, Ukraine ratified the Criminal Convention on Combating Corruption, which was adopted back in 1999 in Strasbourg. Thus, Article 3 of this Convention establishes that parties, i.e., countries must take certain legislative and other measures that may be important and necessary to introduce in their domestic legislation criminal liability for the intentional commission or receipt by various officials of any undue advantage, either directly or indirectly for them personally or for other persons. It can also be acceptance of promise or offer for granting such advantage carried out for non-performance or execution of their official powers (Criminal Law Convention On Corruption, 1999).

It should be noted that in Ukraine the legislator was guided by this very Convention when making amendments to the current Criminal Code of Ukraine (hereinafter - CC). But here the changes were made not only for receiving or giving but also for offering or promising unlawful benefits, as well as for promising or offering any employee of state enterprises, institutions, or organizations.

According to scholars who have studied this issue, in particular, Sharmar, Bronevytska, such wording in the current Criminal Code is inaccurate. They do not agree with this wording of such norms of law about the criminalization of promises or offer or their acceptance to provide an undue benefit. These norms are enshrined in Articles 354, 368, 369, 370 of the current Criminal Code.

The reason for such opinion is considered the fact that committing the above-mentioned acts can only speak about a certain intention or opinion to receive an unlawful benefit because this does not speak about the *corpus delicti* provided by Article 11 of the said Code (Criminal Code of Ukraine, 2001, art. 11).

However, in the case where individuals have come to a certain consensus on the conditions and manner of implementation of their intentions regarding the actions to provide or receive an undue benefit, only then can such actions be understood as preparation for a crime. Unfortunately, in practice, it is almost impossible to take measures to prove or disprove such arrangements.

In addition, speaking of similar inconsistencies, it should be mentioned that a similar situation with the same implementation of international criminal law has also developed with the concept of bribery. It is used in some articles of the Criminal Code of Ukraine. As an interpretation, it is

a method of committing a crime (Article 386 of the CC), a component of a socially dangerous act (Article 370 of the CC) or as a collective concept in the content of which different socially dangerous acts are included (Articles 160, 354, 368).

Let us note that here we can conclude that the Ukrainian legislative body has not reproduced a unified approach to the interpretation of the concept of bribery in these articles of the Code. That is why to date there remains an open concept regarding such term, because it is without indication of the actions covered by such content (Zahynei, 2015).

Studying the problems of legal transformation of the norms of international law in the sphere of the criminal law of Ukraine, we should also mention the status of such implementation of borrowed norms in the civil legislation of Ukraine as well.

As already noted, part of the domestic system of law are norms, that is, rules of conduct established by the state in the face of the legislature. Such norms are expressed primarily in legislative acts. At the same time, norms of international civil law are considered part of the system of such institutions and must be established together on the initiative of several states. That is why it is impossible to recognize an international treaty as a source of domestic law (Treskov, 2020; Panova *et al.*, 2021).

As is known, treaties, which are international in nature, are considered to take precedence over national legislation. This regulation of norms marks the general direction of harmonization of international treaties with domestic legislation, the prospect of which should be the unification of norms of the civil law sector.

As in the criminal branch, the issue of conflict of such similar legal norms arises here as well (Stepanenko, 2018; Safonchyk *et al.*, 2021).

So, the general rule is that if an international agreement has been concluded earlier, then the domestic law will not come into force at all or should even be repealed (United nations convention on contracts for the international sale of good, 2010).

In the case of a domestic statutory act that has been previously enacted - then such an act should become null and void as soon as the international treaty enters into legal force. This is where the norms of action of the law in time, established by Article 5 of the Civil Code of Ukraine should be used (Mykhailiuk, 2019).

Note that international civil agreements should be applied only in relations, the parties of which are persons who are citizens or legal entities of certain parties to the treaty.

Note that international agreements are included in civil legal relations if the agreement itself does not establish the need to issue a domestic law to apply such an agreement (Ivanova, 2021).

For example, let us note that the UN Convention of 1980, which regulates relations under contracts for the international sale of goods, should be subject to the application as a relevant source of domestic law in accordance with its scope, namely under such international contracts (Kvitka *et al.*, 2021).

Thus, it should be noted that in practice there are two types of such international agreements: containing norms of direct action and norms that are aimed only at mandatory measures of the state regarding the implementation, i.e., implementation of such norms of international law into domestic law.

For example, we can mention the Law on bills of exchange and promissory notes, as well as the Paris Convention for the protection of industrial property of 1883 (Hamid Sitti Harlina, 2018).

In the norms of this act, it is noted that to provide registration of trademarks should be introduced norms in the national law of the participating countries. On this basis, Ukraine adopted the Law “On Protection of Rights to Marks for Goods and Services”.

Measures on the priority of international legal norms in practice are not applied to all international civil agreements. For example, the Berne Convention for the Protection of Literary and Artistic Works defines that the terms of protection of copyright for member countries may be regulated in the following way: such countries are given the right to determine the terms of protection of rights, exceeding the terms defined in the Convention (Mykhailiuk, 2019).

Thus, it should be noted that in the civil sphere international agreements have experienced great influence precisely because of the transformation of international civil law norms through implementation in Ukrainian law. That is why they become a part of the sources of the Ukrainian legal system. However, this applies to those issues, if international agreements of Ukraine established rules that are not defined in the civil legislation.

Conclusions

Having studied the theoretical and normative-legal foreign and domestic basis in the sphere of influence of norms of international law between states, the following conclusions can be made, namely, that the Ukrainian modern legal system today is at the stage of development, which is called

information. It should be mentioned about the available modernization in Ukraine, which is expressed in modern management schemes of social and legal life, the purpose of which is primarily the implementation of the principles of legality, justice, and equality in society.

An important aspect of the way of modernization of the Ukrainian legal system is considered the adoption of the Concept of legal policy, which is carried out with globalization, which provides for the transformation of certain international legal norms in the Ukrainian legislation. Such a concept involves not only the modernization of the legal system but also the introduction of new communication, integration ties, the establishment of optimal balance in the relations of international law, as well as the transition from the post-Soviet system to a high level of legal consciousness.

In addition, the current problems of implementation of international law in the criminal law of Ukraine are also clarified. It means, in particular, that to be more detailed and informative, the legislative body of Ukraine should make certain changes in the criminal procedural legislation and expand and interpret certain aspects of international norms that do not detail the regulation of criminal relations.

It was also found that, unfortunately, when implementing certain provisions of acts of international legal nature, the domestic legislator does not necessarily take into account the specifics of Ukrainian legislation on criminal liability.

In the civil sphere, international agreements have experienced a great influence precisely because of the transformation of norms of international civil law through implementation to Ukrainian legislation. That is why they become part of the sources of the Ukrainian legal system. However, this refers to those issues if international agreements of Ukraine established rules not defined in civil legislation.

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