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SOME PROBLEMS OF EFFECTIVE IMPLEMENTATION OF INTERNATIONAL LAW

На підвалинах наукових розробок з'ясовано практичне значення питання імплементації норм міжнародного права в національне кримінальне законодавство, проаналізовано теоретичні основи конструювання наукової концепції імплементації норм міжнародного права, виявлення найважливіших факторів, що визначають ефективність їхньої дії на практиці.

Ключові слова: *зростання ролі міжнародного права, глобальні проблеми, міжнародний кримінальний суд, правова колізія, відповідальність юридичних осіб, уніфікація внутрішньодержавного права, верховенства міжнародного права.*

На фундаменте научных разработок выяснено практическое значение вопрос имплементации норм международного права в национальное уголовное законодательство, проанализированы теоретические основы конструирования научной концепции имплементации норм международного права, выявления важнейших факторов, определяющих эффективность их действия на практике.

Ключевые слова: *рост роли международного права, глобальные проблемы, международный уголовный суд, правовая коллизия, ответственность юридических лиц, унификация внутригосударственного права, верховенства международного права.*

On the fundamentals of scientific developments, a practical importance of the issue of implementation of standards of international law in the national criminal legislation is determined, theoretical bases of building a scientific concept of the implementation of the international law standards are analyzed; the most important factors that determine an efficiency of their effect on a practical level are revealed.

Key words: *increase of role of international law, global problems, international criminal court, conflict of law, responsibility of juridical person, unification of national law, rule of international law.*

International law, as well as domestic law Ukraine consists of legal norms. Under international law generally refers to treatment that is recognized by States and other subjects of international law as legally binding.

International law has developed from custom, which currently has not lost its values, norms of international law are divided into two groups: customary law and norms, resulting from coordination wills States. The last group of international law holds in its normative array significant place, because giving stability objective requirements of international law, the uniqueness in determining the rights and obligations of participants in international relations, contractual rules superseded customary law.

In recent years the problem of the effectiveness of international law attracts a growing number of scientists in the field of international law. In particular, the results of the impact of work-I. ZaydlHohenveldern, O.V. Zadorozhniy, D.L. Zlatopolskii, H.V.Ihnatenka, A. Kyle, A. Kami, G.A.Kelzen,I.I.Lukashuk,D.B.Levin,F.Lyusher,V.V.Maklakov,P.F.Martynenko,M.Merlin-Demartis, L.H. Mingazov, N.V. Mironova, M.O. Mityukova, Nguyen QuocDinya, M.A. Nudelya, ZH.Y. Ovsepian, P.M. Radoynovo, M.F. Selivon, B.O.Strashuna, N.V. Teslenko, O.I.Tiunova, L.D. Timchenko, B.N. Topornina, H. Tripelya, V.O. Tumanov, E.T. Usenko, L. Favoro H.H. Fittsmorisa M. Fromont, Chirkin, V.M. Shapoval, S.V. Shevchuk, Y.L. Shulzhenko, B.V.Schetinina and other scientists.

The European choice of Ukraine makes review of certain provisions of national criminal law and legislation. This includes the implementation of international law in domestic criminal and criminal procedure legislation of Ukraine. The cause of the increasing role of international law and its rules associated with the emergence and exacerbation of global problems that are of vital importance for the future of civilization. No government can solve these problems alone, without combining intellectual and material resources without developing a joint strategy.

Formulation of the problem. It should be noted that in legal science relevant issue is the implementation of international law in national legislation, but did not finally resolved, although its practical value increases. In particular, many problems with the implementation of international law arising in the field of international criminal law and international criminal justice.

The aim of the study is to develop theoretical foundations, design implementation of the scientific concept of international law, identify the most important factors that determine the effectiveness of their actions. In the field of international criminal justice, this problem has gained urgency in connection with the adoption of 18 July 1998 on the Rome conference Statute of the International Criminal Court. Today many countries legislation does not allow to assume and carry out obligations under the Rome Statute. Regulations that restrict the administration of justice solely by national judicial authorities have the constitution of many countries of the CIS, including Ukraine.

Statement of the material. In considering compliance with the provisions of the Statute of the International Criminal Court, the Constitution of Ukraine, the Constitutional Court of Ukraine has concluded: "Recognize the Rome Statute of the International Criminal Court, signed on behalf of Ukraine" on 20 January 2000 that does not meet the Constitution of Ukraine, in terms of par. 10 preamble concerning provisions and art. 1 of the Charter, according to which "the International Criminal Court complement the national criminal justice authorities" [1]. The reason for this was the resolution of the Constitutional Court of the provisions of Art. 124 of the Constitution of Ukraine, according to which justice is administered exclusively by the courts [2]. These include the Constitutional Court of Ukraine and courts of general jurisdiction.

In turn, Art. 1 of the Rome Statute, pointing out that the International Criminal Court is a permanent body authorized to exercise jurisdiction over persons responsible for the most serious crimes of concern to the international community, at the same time emphasizes that the Court complements national systems [3]. This distinguishes the International Criminal Court on international judicial bodies, including the European Court of Human Rights, the right to apply for protection in which the rights and freedoms enshrined in the part four of Article 55 of the Constitution of Ukraine. These violate international bodies dealing only with the number of persons and the person may apply to them only after the use of national means of legal protection.

Thus, in contrast to international judicial bodies under part. 4. 55 of the Constitution of Ukraine, which by their nature are complementary ways of protecting the rights and freedoms of man and citizen, the International Criminal Court system complements national jurisdiction.

The possibility of such additions judicial system of Ukraine is not provided Sec. VIII "Justice" Constitution of Ukraine. This leads to the conclusion that paragraph 10 of the preamble and Art. 1 of the Charter is inconsistent with the provisions of ch. 1, 3. 124 of the Constitution of Ukraine, so Ukraine's accession to this Statute in accordance with Part.2, Art. 9 of the Constitution of Ukraine is possible only after making appropriate changes to it (para. 2.1).

These constitutional provisions are in the constitutions of many nations: according to similar rules contained in the Constitution of Azerbaijan Republic (art. 125), judicial power is exercised

only courts via justice: Constitutional Court, Supreme Court, appellate courts, general and specialized courts. Judicial power is exercised by means of constitutional, civil and criminal proceedings and in other forms provided by law; Constitution of Moldova (art. 114), the Constitution of the Republic of Belarus (art. 109), the Constitution of Georgia (Art. 82), the Constitution of Kazakhstan (art. 75) of the Constitution of the Republic of Armenia (Art. 91) of the Constitution of Turkmenistan (art. 100) Constitution of the Republic of Uzbekistan (art. Art. 106, 107). This discrepancy Charter and the constitution takes place in many European countries: Germany (Art. 92), Spain (art. 117), Greece (Art. 87), Poland (art. 175), Portugal (Art. Art. 205, 211) and others [4, 123].

Thus, the provisions of the constitution is the basis for a finding of conflict with the rules of the Rome Statute, as defined in a clear form and establish a list of bodies that administer justice, including the International Criminal Court are not mentioned. However, it should be noted that the International Criminal Court will not substitute but complement national criminal justice authorities, giving them priority right to prosecute and to attract perpetrators to justice if national system is functioning properly, then there is no reason for the intervention of the International Criminal Court.

Studying the experience of these countries to resolve legal conflicts prevailing useful to develop solutions to the situation in Ukraine. According to the Constitutional Court of Ukraine, establishment of responsibility for committing most crimes under the Rome Statute, is the international legal obligations of Ukraine under other international instruments which became effective for our country. Moreover, the Charter prohibiting the crime of genocide, crimes against humanity, war crimes, crimes of aggression, considered today as usual norms of international law have repeatedly confirmed courts. Thus, their character as a crime under Art. 18 of the Constitution does not depend on Ukraine's accession to the Statute (para. 2.2).

Consequently, the ratification of the Rome Statute must be preceded by amending the Constitution and international practice shows, it could cause constitutional problems, how to settle the different essential diversity.

Very urgent task seems complex development of theoretical and practical issues of criminal liability of legal entities, they are recognized as subjects of crime in many developed countries of the world that is not only family representant common law (England, USA, Canada, Australia, etc.) but civil law (France, Netherlands, Denmark, Sweden, etc.).

Public risk crime entities is that they significantly affect the structure and dynamics of crime in various areas of criminal protection, causing this damage the normal structure of society because of their special status, scale, global and likely destructive effect on social relations .

Recognition or non-recognition of legal entities of the crime – the problem is not new. Many scholars at various times raised this issue both in Ukraine and abroad. In many ways it was decided in the criminal law of foreign countries. Thus, the CC Holland, France, of Denmark, Sweden provided such responsibility, and CC Germany, Spain and Sweden – no.

Noteworthy is the fact that the codes of European countries found provisions on criminal liability of legal persons for terrorist acts (ch. 2, Art. 237 Penitentiary Code of Estonia, Art. 422-5 of the Criminal Code of France, para. 2 of the Criminal Code §147 Norway century. 8 chapter 34a of the Criminal Code of Finland). In general terms the criminal liability of legal persons in question, in particular, ch. 1, Art.21 of the Criminal Code of the Republic of Moldova, Art. 5 (as amended by the Act of May 4, 1999) of the Criminal Code of Belgium, in Chapter 5 “corporate liability” (§ 2-27) of the Criminal Code of Denmark.

A number of international conventions stipulated the obligation of States Parties to establish the liability of legal persons for committing criminal acts. About establish criminal, civil or administrative liability of legal persons in question, particularly in art. 5 of the International Convention for the Suppression of the Financing of Terrorism in 1999 [9], Art. 10 of the UN Convention against Transnational Organized Crime in 2000 [10]. By ratifying this Convention [11; 12], Ukraine has made a reservation that it assumes no obligation to establish the liability of legal persons. According to O. Romanyuk, becoming party to these acts Ukraine thus took over the direct obligation to establish the liability of legal persons for offenses [13, 42]. She said: “In accordance with the recommendations of the Committee of Ministers (2000 p.) 11 states – members of the

Council of Europe (Ukraine is a member of the Council of Europe in 1995) should introduce civil and criminal liability of legal entities with very specific punishment". Note that in the Framework Decision of the Council of the European Union on combating terrorism on June 13, 2002 p., Reads: "All Member States shall take similar definition of terrorist offenses, exactly as offenses relating to terrorist groups. In addition, in relation to natural and legal persons who have committed or are responsible for such crimes, shall provide for penalties and sanctions which reflect the serious nature of the crimes".

The first step of Ukraine on introduction of criminal liability of legal persons was the adoption June 11, 2009 Law of Ukraine "On the liability of legal persons for committing corruption offenses" [14], which according to the UN Convention against Corruption, Criminal Law Convention on Corruption and the Law of Ukraine "on principles of prevention and combating corruption" establishes the liability of legal persons for the commission of corruption offenses by authorized persons, and defines the procedure for bringing them to justice. This Law does not apply to legal entities of public law, fully maintained by the state or local budgets, as well as international organizations .It radically changed the approach to understanding the nationwide corruption and anti-corruption measures contains a number of stories, legal institutions, which are unknown to the domestic legal traditions.

The problem of interaction between international and national criminal law is of particular relevance against the background of globalization, transnational crime and terrorism, as well as steps the international community to combat this phenomenon. In the context of globalization and combating transnational crime we see active formation of conventional international criminal law and the further development of international criminal justice in the form of UN international tribunals and the International Criminal Court (hereinafter – ISS). Last created at the founding conference in Rome in 1998. As of April 2003 Rome Statute of the ICC 139 countries have signed and ratified by 90.

Participation in these international political and legal processes in Ukraine requires the implementation of international criminal law in the Ukrainian legislation. The solution put on the agenda clarify the following issues:

– as far as is reasonable, possible and necessary such implementation;

–what are the acceptable limits of depth and the legal implementation;

–which may be social and legal threats from the transformation rules of national law concerning the protection of the rights and freedoms of Ukrainian citizens;

–how will this affect the sovereignty and independence of the country and the state of national security.

Conclusions. The rules of national law transformed into international law, serve as sources of international law. States taking part in the optimal development and adoption of international legal norms and decisions, while ensuring sovereignty. The structure of international law approaches the structure of the national legal system. The law before they become part of national law are reviewed for compliance with human values contained in international law. With international law is the unification row fields of domestic law, that is to bring unity to the legal provisions in force within the various states and state entities. National law often adjusted when entering countries in international and European organizations. Protection of human rights domestically less effective if the internal law not open the norms and principles of international law. The national law should be bound legally act of international law and the conditions for their implementation. The rule of international over domestic law adopted by States or in law or in practice.

Growth importance and role of international legal regulation is determined primarily by objective factors such as the growing interdependence between nations. The modern world is becoming more holistic, integrated and needs to be ordered, which is expected behavior states. It is possible to provide primarily through social norms, including international law has an important place. No exaggeration to say that European integration our country without international law is simply impossible.

Another reason for the growing role of international law and its rules associated with the emergence and exacerbation of global problems that are of vital importance for the future of civ-

ilization. No government can not solve these problems alone, without combining intellectual and material resources without developing a joint strategy.

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