МІЖНАРОДНЕ ПРАВО

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BURIAK K.M.

THEORETICAL-LEGAL BASIS OF IMPLEMENTATION OF INTERNATIONAL STANDARDS INTO NATIONAL LEGISLATION

The article is devoted to the scientific position of jurists concerning the implementation of international standards into national legislation and its approximation to international standards of legal regulation. It is theoretically proved that: the implementation and adaptation of international standards in national legislation is a priority of legal reform in Ukraine; the development of international integration and national legal systems at the current stage, the extension space of interaction between national and international legal systems between require effective legal remedies that would take into account the agreed ways of such interaction, as well as contributed to the harmonious functioning of these systems in contemporary legal space; only by achieving coherence between legal systems, including systems of law as their regulatory component, there will be prerequisites and real opportunities for effective intergovernmental relations. According to the analysis of scientific views of the lawyers clarified the essence and the legal nature of the terms "implementation", "national-legal implementation". Defined: the basic methods of implementation of the norms of international law, their essence, suggested the choice of method of implementation to take into account the circumstances under which this process occurs, the availability at national level of the rules of law that govern these relationships with a view to preventing the occurrence of conflicts between national and international law. It was found that the mechanism of implementation of international law include: the legal ways of the application of international conventional and customary administrative law; the special constitutional and procedural grant implementation; jurisprudence concerning official interpretation of norms of international law. The proposal with respect to the preparation and implementation of the concept of rapprochement of legal systems of states, which is essential in the choice of research methodology the implementation of international legal norms; creation in the domestic legal system of an effective mechanism of implementation and the actual use of international law in various areas of law.

Key words: *rule of law, commitment, conceptual problems, conflicts, ways of implementation, the implementation mechanisms and priorities for adaptation.*

Стаття присвячена дослідженню наукових позицій правознавців щодо імплементації міжнародних норм у національне законодавство та наближення його до міжнародних стандартів правового регулювання. Теоретично обґрунтовано, що: імплементація та адаптація міжнародних норм у національне законодавство є пріоритетним напрямом правової реформи в Україні; розвиток міжнародної, інтеграційних і національних правових систем на сучасному етапі, розширення простору взаємодії національних і міжнародно-правових систем між собою потребують ефективних правових засобів, які б враховували узгоджені способи такої взаємодії, а також сприяли гармонійному функціонуванню зазначених систем у сучасному правовому просторі; лише за умови досягнення узгодженості між правовими системами, в тому числі і системами права як їх нормативною складовою частиною, виникнуть передумови і реальні можливості ефективних міждержавних відносин. За результатами аналізу наукових поглядів вітчизняних та зарубіжних правознавців з'ясовано сутність та правову природу термінів «імплементація», «національ-

© BURIAK K.M. – Candidate of Legal Sciences, Assistant of the Department of European and International Law (Oles Honchar Dnipro National University)

но-правова імплементація». Визначено основні способи імплементації норм міжнародного права, їх сутність, запропоновано під час вибору способу імплементації враховувати обставини, за яких відбувається цей процес, наявність на національному рівні норм права, які регулюють ці відносини з метою недопущення виникнення колізій між нормами національного та міжнародного права. З'ясовано, що механізм імплементації міжнародних норм права включає правові способи застосування договірного міжнародного та звичаєвого адміністративного права, конституційні спеціальні та процесуальні гарантії імплементації, юриспруденцію щодо офіційного тлумачення норм міжнародного права. Надано пропозиції щодо підготовки та запровадження концепції зближення правових систем держав, що має суттєве значення у виборі методології дослідження імплементації міжнародно-правових норм, створення у вітчизняній правовій системі дієвого механізму імплементації та фактичного використання норм міжнародного права в різних галузях права.

Ключові слова: *норми права, зобов'язання, концептуальні проблеми, колізії, способи імплементації, механізми імплементації, пріоритети адаптації.*

Introduction. In the context of Ukraine's integration into the world community, the need for legal reform, which primarily involves bringing domestic legislation in line with international law, is becoming increasingly urgent. Implementation of the provisions of international legislation is also provided with the economic part of the Association Agreement, which is essential in the context of reforms, because the provisions of the agreement can and must serve as the basis for a new model of socio-economic development of Ukraine. O.G. Tkachenko said that no countries of the world in modern conditions could exist separately from other countries and was isolated from the processes which occurred in the region or part of the world [1]. As we can see, the problem of improving national legislation is becoming more urgent and requires proper scientific study.

Problem statement. The purpose of the article is to analyze the scientific positions of legal experts on the implementation of international legislation in the field of administrative responsibility, to clarify the essence, order, main methods and mechanisms of implementation of international law

Research result. N.M. Onishchenko thinks that international and domestic law are two systems of the same social reality, which have many common properties and features and act as an internal unity of a higher system – law as a General social phenomenon [2]. The rapid development of international, integration and national legal systems at the present stage; the expansion of the space for interaction between national and international legal systems require effective legal means that would take into account the agreed ways of such interaction, as well as contribute to the harmonious functioning of these systems in the modern legal space [3]. In other words, the purpose of international regulations is to establish common standards for the activities of States, as well as to ensure their implementation and uniform application. Currently, there are two types of legal relations: among subjects of international law regarding rights that are regulated directly by international law; among the relevant bodies of States to fulfill international legal obligations that arise from such a rule and are regulated by national law.

Article 18 of the Constitution of Ukraine provides that Ukraine's foreign political activity is aimed at ensuring its national interests and security by maintaining peaceful and mutually beneficial cooperation with members of the international community in accordance with generally recognized principles and norms of international law [4]. According to article 9 of the Constitution of Ukraine and paragraph 1 of article 17 of the Law of Ukraine "On international treaties of Ukraine", Ukraine recognizes the priority of generally recognized norms of international law over the norms of domestic law, international treaties, the consent to be bound by the Verkhovna Rada of Ukraine, become part of its internal (national) legislation. In addition, if other rules are established by a duly concluded international agreement of Ukraine than those ones, which are established by the legislation of Ukraine, then the rules of the international agreement are applied [4; 5].

According to T.A. Kolomoets, implementation and adaptation of international norms into national legislation: first, is a priority area of legal reform in Ukraine; second, adapt domestic legislation to the relevant international standards of law-making and law enforcement; third, the purpose of adaptation of domestic legislation is to achieve compliance of the legal system of Ukraine with the EU legal system (acquis communautaire); fourth, it is carried out in a clear sequence (in several stages); fifth, it is based on the principles of system-functional and comparative legal knowledge of state-legal phenomena [6, p. 20–21].

Implementation is the actual implementation of international obligations at the domestic level, carried out by transforming international legal norms into national legislation and regulations. A rule of international law retains its status, but its content is also granted the status of a rule of national law. Article 9 of the Constitution of Ukraine of 1996, which provides that existing international treaties, the consent to be bound by the Verkhovna Rada, are part of the national legislation of Ukraine (there is a direct reception – the norm of international law is borrowed without change by national legislation).

The term "implementation" (from the English. "implementation") means "realization, ensuring of execution", literally – "providing a practical result and actual implementation by specific means" [7]. A.S. Gaverdovsky says that implementation is purposeful organizational and legal activities of States that is carried out individually, collectively or within international organizations in order to timely, comprehensive and full implementation of their obligations in accordance with international law. According to his opinion, the essence of implementation is not in the transformation of international legal norms into national law, but in the process of perception by national law of the rules of international treaties [8]. V. Suvorova considers the term "implementation" as a synonym for the concept of "realization" – the implementation of international law in the practical activities of States and other subjects [9]. In the international legal literature, the term "implementation" is the implementation of international law at the international and national levels.

K.V. Berezhnaya said that the analysis of scientific approaches to determination of essence of category "implementation" gave the opportunity to propose the term "national-legal implementation". It is the work of the state represented by authorized bodies, which consists of a sequential combination of legislative, enforcement, and organizational and executive activities to include international law within the national legal system and ensure their actual implementation [10].

The order of implementation of international norms is determined by the norms of national law. In order to improve the effectiveness of work in this direction, it is necessary to create an effective implementation mechanism in the national legal system and provide appropriate conditions for the implementation and actual use of international law in various branches of law of Ukraine. At the present stage, this problem is partially solved by the Vienna Convention On the law of treaties, according to which States do not have the right to invoke domestic law to justify non-compliance with an international Treaty. The problem is solved partly because it concerns only international treaties. And international law consists not only of international treaties, but also of ordinary norms, resolutions of international organizations and other sources.

D. B. Levin considers that transformation, reference, and reception are the main ways of implementing international law [11]. I.I. Lukashuk distinguishes three types of transformation: direct (incorporation – inclusion of the norms contained in the contract into the internal law directly); indirect (the rules of the contract take effect of the rules of internal law only after the publication of a special act by the legislative body); mixed (it combines elements of the first two) [12]. It should be noted that in the process of transforming international norms of administrative law into the legal system of Ukraine, it is advisable to adhere to the following provisions:

- maintaining of their own rationality of both systems, that is, on the one hand, state neutrality, and on the other – a well-defined competence that would not allow social spontaneity;
- maintaining flexibility in the relationship on the signing of joint agreements;

– needs of constant introspection in both parts of the system that is related with trends in the legal regulation of management in the public sphere where the relations implementerade legal norms, which are characterized by the imperative method of regulation;

– the creation of structures by means of laws that offer regulatory communications, target setting and limits of legal regulation.

Sending involves the operation of international norms to an unchanged form, their direct application by subjects, it is quite complex in application and it has certain features (when sending the rules of international law are implemented into the national legal system, but they do not dissolve in it, but take a special place).

Reception is mainly applied after the state has given its consent to be bound by an international treaty (reception is the actual repetition of the content of international law by the relevant acts of national law). According to V.G. Butkevich, the essence of reception is that the legislator borrows a model of behavior in international law and gives it a legal obligation for subjects of domestic law in the relevant legal relations. The lawyer notes that the reception can only exist in a "special form" and only in a specific case. Reception in the "General form" as reproduction in national law without changes of all international law, is not practiced [13]. V. Skomorokha argues that the reception cannot talk about the

direct action of international legal norms in the domestic legal order, because the reception is simply a means of replacing them [14]. We emphasize that when choosing a method of implementation, it is necessary to take into account all the circumstances under which this process takes place, the existence of legal norms at the national level that regulate these relations to some extent in order to avoid conflicts between national and international law.

As for the mechanism of implementation of international law, its definition should be as clear and complete as possible, its task is to cover the international legal obligations of the state, which are based on the basic principles and norms of international law and it should not complicate or limit the achievement of the goals laid down in international law. The lack of proper clarity and certainty in this issue leads to undesirable consequences, in particular, such as inflation of the law [15, p. 39−40]. The mechanism of implementation of international administrative law includes: legal methods of application of treaty international and customary administrative law; constitutional special and procedural guarantees of implementation; jurisprudence on the official interpretation of international law. Direct application of international norms in the legal regulation of the state is quite problematic, so there is a problem of implementation of international law in national legal systems.

In addition, an important factor in the functioning of an effective mechanism for the implementation of international law is the solution of another significant problem – whether international legal norms can be applied in the sphere of domestic relations without declaring international treaties as sources of domestic law and without their transformation into domestic legislation. Despite this, the implementation of most of the obligations of States under international law provides for the exercise by States of sovereign powers in the domestic sphere. So, S.M. Ratushny notes that implementation is achieved only through the integration of the provisions of international law into the internal legal order of the state [16].

Now, in the modern conditions there is an active search for qualitatively new forms of interstate cooperation and a review of the existing institutional mechanisms of international organizations. The dynamics of such features of modern international relations invariably affects the increase in the overall contractual international legal framework, which, in turn, expands the normative structure of international law in terms of legal obligations of States.

Conclusions. In the domestic theory of international law, the tactics and strategy of interaction between international and domestic law have been studied quite clearly and consistently, but there is no concept of convergence of legal systems of States, which is essential in choosing the methodology for studying the implementation of international legal norms. Implementation of international norms is a process of approximation of national legislation in the field of public administration of international legislation using methods of law-making, planning, coordination and control, at the same time it is a component of Ukraine's integration, a prerequisite for harmonization of legislation with the legislation of EU member States. Only if there is consistency among legal systems, including legal systems as their normative component, will there be prerequisites and real opportunities for effective inter-state relations. In other words, coordination of the interests of different States is possible only on the basis of the formation of a common legal space – common or fundamental legal norms.

References:

1. Ткаченко О.Г. Організаційно-правові засади зовнішньоекономічної діяльності в Україні : навч. посібник. Донецьк, 2008. 153 с.

2. Оніщенко Н.М. Співвідношення внутрішньодержавного і міжнародного права: наукові реалії сьогодення. *Вісник Національної академії правових наук України.* 2015. № 1(80). С. 29–36.

3. Іванченко О.М. Співвідношення норм національного та міжнародного права : автореф. дис.. … канд. юрид. наук : 12.00.07. Одеса, 2011. 25 с.

4. Конституція України, прийнята на п'ятій сесії Верховної Ради України 28 червня 1996 р. *Відомості Верховної Ради України*. 1996. № 30. Ст. 141 (із змінами).

5. Про міжнародні договори України : Закон України від 22 грудня 1993 р. № 3768-XII. *Відомості Верховної Ради України.* 1994. № 10.

6. Коломоєць Т.О., Аганіна А.О. Перепідготовка, підвищення кваліфікації державних службовців за законодавством України: сучасний стан правового регулювання та пріоритети адаптації до законодавства ЄС. Запоріжжя : ЗНУ, 2014. 196 с.

7. Словник української мови. Т. 9. Київ : Наукова думка, 1978. 920 с.

8. Гавердовський А.С. Імплементація міжнародного права : навч. посібник. Київ : Вища школа, 1980. 318 с.

9. Суворова В.Я. Обеспечение реализации договорных норм международного права (юридическая природа). *Государство и право*. 1991. № 9. С. 116.

10. Бережна К.В. Імплементація норм права європейського союзу в адміністративне законодавство України: концептуальні проблеми. *Прикарпатський юридичний вісник*. 2016. Вип. 5 (14). С. 38.

11. Левин Д.Б. Актуальные проблем теории международного права. Москва : Наука, 1974. С. 247.

12. Лукашук И.И. Национальное право о взаимодействии с международным правом. Международное право. Общая часть. Москва, 1999.

13. Буткевич В.Г. Согласование международного и внутригосударственного права. Киев, 1981.

14. Скомороха В. Практика Конституційного суду України як засіб імплементації європейських стандартів прав і свобод людини в Україні. *Вісник Конституційного Суду України.* 2000. № 5. С. 61–88.

15. Antonowicz L. Podrcznik prawa miedzinarodowego. Wyd. Cwarte. Warshawa : Wyd. Prawnicze PWN, 1998.

16. Ратушний С.М. Деякі теоретичні питання гармонізації національного законодавства з міжнародно-правовими нормами. URL: https://www.google.com.ua/url.