

СПІВВІДНОШЕННЯ НАЦІОНАЛЬНИХ І МІЖНАРОДНИХ ПРАВОВИХ СИСТЕМ¹

У статті здійснено аналіз наявних взаємодій міжнародних і національних правових систем в умовах глобалізації, а також місце міжнародних договорів у національній правовій системі, конституційних підстав, засобів і способів подолання колізій між національним законодавством України і міжнародними договорами України.

Ключові слова: міжнародна правова система, міжнародний договір, національна правова система, національне законодавство України, дуалістична теорія, моністична теорія, колізії, Конституція України, верховенство права, загальновищими норми міжнародного права.

Тема цієї статті така ж давня, як і міждержавне правове співробітництво.

Проте тривалий час проблема співвідношення національного і міжнародного права розвивалася переважно на практично-прикладному рівні. Її активне доктринальне осмислення розпочалося лише в XIX ст. Хоч воно було започатковане представниками внутрішнього, національного права, зокрема такими відомими міжцарськими фахівцями в галузі державного права, як П. Лабанд, Г. Еллінек, Р. Ієринг та ін., досить скоро центр дослідження цієї проблеми перемістився в міжнародне право. За останні півтора століття правознавцями-міжнародниками їй присвячено безліч праць, зокрема монографічних. Фахівці в галузі міжнародного права й надалі задають тон в осмисленні названої проблематики (принаймні на пострадянському просторі).

Однак, як у черговий раз підтвердив законстаспірант кафедри загальнотеоретичних та державно-правових наук НаУКМА Є. О. Зверев кандидатської дисертації, присвяченої вивченню міжнародних договорів національними судами [1, с. 16], у спеціалізованій вченій раді К 26.008.04 в НаУКМА (рада об'єднує дві спеціальності: 12.00.01 – теорія та історія держави і права; історія політичних і правових учень та 12.00.11 – міжнародне право), проблема співвідношення національних і міжнародних правових систем має яскраво виражений міждисциплінарний характер. Численні запитання, поставлені здобувачеві під час захисту

членами ради – представниками обох названих спеціальностей, виступи опонентів та членів ради в процесі обговорення дисертації засвідчили, що низка принципових питань взаємної проблематики залишаються гостро дискусійними і, очевидно, не можуть бути вирішені тільки правознавцями-міжнародниками. Вони вимагають спільних зусиль фахівців з міжнародного права та представників конституційного права і загальнотеоретичного правознавства.

Серед цих питань підвищеної уваги потребують як традиційні – про ступінь автономності систем міжнародного і національного права, так і питання, безпосередньо пов'язані з реалізацією положень Конституції України – про місце міжнародних договорів у національній правовій системі, зокрема серед джерел національного права, про конституційні підстави, засоби і способи подолання колізій між міжнародними договорами і національним законодавством України тощо.

Саме ці питання спробує коротко, в межах обсягу статті, проаналізувати.

Взаємодія міжнародних і національних правових систем в умовах глобалізації

Однією з характерних ознак процесів глобалізації в правовій сфері є зростаючий вплив міжнародного права і міжнародних правових систем на національне право, національну правову систему та їх сім'ю.

Напрямок та способи цього впливу залежать від співвідношення між національним і міжнародним правом, що, своєю чергою, значною мірою визначається тим, якою концепцією співвідношення між ними дотримуються ті чи інші держави. Існують дві такі основні концепції (теорії) – дуалістична і моністична.

¹ Стаття підготовлена на основі дослідів на юридичному семінарі «Співвідношення національного і міжнародного права», проведеному кафедрою загальнотеоретичних та державно-правових наук та Центром дослідження проблем верховенства права НаУКМА в межах Дня науки в НаУКМА, 27 січня 2016 р.

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The Top Books of the Year Pravovoi Status Natsionalnykh Menshinstv Teoretikopravovye Aspekty The year 2023 has witnessed a noteworthy surge in literary brilliance, with numerous compelling novels enthralling the hearts of readers worldwide. Lets delve into the realm of bestselling books, exploring the engaging narratives that have captivated audiences this year. Pravovoi Status Natsionalnykh Menshinstv Teoretikopravovye Aspekty : Colleen Hoovers "It Ends with Us" This poignant tale of love, loss, and resilience has captivated readers with its raw and emotional exploration of domestic abuse. Hoover expertly weaves a story of hope and healing, reminding us that even in the darkest of times, the human spirit can succeed. Pravovoi Status Natsionalnykh Menshinstv Teoretikopravovye Aspekty : Taylor Jenkins Reids "The Seven Husbands of Evelyn Hugo" This captivating historical fiction novel unravels the life of Evelyn Hugo, a Hollywood icon who defies expectations and societal norms to pursue her dreams. Reids compelling storytelling and compelling characters transport readers to a bygone era, immersing them in a world of glamour, ambition, and self-discovery. Discover the Magic : Delia Owens "Where the Crawdads Sing" This mesmerizing coming-of-age story follows Kya Clark, a young woman who grows up alone in the marshes of North Carolina. Owens crafts a tale of resilience, survival, and the transformative power of nature, captivating readers with its evocative prose and mesmerizing setting. These popular novels represent just a fraction of the literary treasures that have emerged in 2023. Whether you seek tales of romance, adventure, or personal growth, the world of literature offers an abundance of engaging stories waiting to be discovered. The novel begins with Richard Papen, a bright but troubled young man, arriving at Hampden College. Richard is immediately drawn to the group of students who call themselves the Classics Club. The club is led by Henry Winter, a brilliant and charismatic young man. Henry is obsessed with Greek mythology and philosophy, and he quickly draws Richard into his world. The other members of the Classics Club are equally as fascinating. Bunny Corcoran is a wealthy and spoiled young man who is always looking for a good time. Charles Tavis is a quiet and reserved young man who is deeply in love with Henry. Camilla Macaulay is a beautiful and intelligent young woman who is drawn to the power and danger of the Classics Club. The students are all deeply in love with Morrow, and they are willing to do anything to please him. Morrow is a complex and mysterious figure, and he seems to be manipulating the students for his own purposes. As the students become more involved with Morrow, they begin to commit increasingly dangerous acts. The Secret History is a exceptional and thrilling novel that will keep you guessing until the very end. The novel is a cautionary tale about the dangers of obsession and the power of evil.

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