

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, загальнови́значні 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 ХІХ 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 Статтю підготовлено 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.

Pravovoi Status Natsionalnykh Menshinstv Teoretikopravovye Aspekty

F Rizvi



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