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## **Constitutional and legal aspects of the ratio of international and domestic law**

The article discusses the content and role of constitutional legal regulation of the ratio of domestic and international law in Kazakhstan and foreign countries. The authors show the domestic and foreign specifics of the constitutional regulation of the correlation of national and international law, different approaches of legislators to fixing the correlation of domestic and international law in the Basic Laws are indicated. The article also addresses the problems of interaction between international and constitutional law. The authors highlight theoretical and practical issues related to the incorporation of international law into the legal systems of states by the Constitutions of foreign countries and the Republic of Kazakhstan. Based on the comparative legal analysis, the features of fixing the correlation of domestic and international law in the constitutions of foreign countries are revealed. The issues of fixing the norms of general international law and international treaties in the Constitutions of various countries are also considered. Conclusions have been made, in particular, that the Constitution of the Republic of Kazakhstan as a whole is in line with global trends in the development of constitutional law, due to universal globalization and internationalization of law; about the need for further scientific development of theoretical and practical issues relating, for example, to the concept and content of universally recognized principles and norms of international law, their place in the hierarchy of legal systems of states. As one of the directions for further improvement of constitutional legislation, a proposal has been formulated to include in the constitutional and legal law provisions on universally recognized principles and norms of international law on human rights.

*Keywords:* Constitution, constitutional legislation, the ratio of domestic and international law, legal system, priority of the Constitution.

### *Introduction*

A huge impact on the global constitutional processes is exerted by modern international political and economic realities caused by globalization, leading to the convergence of various legal systems, their active interaction and interpenetration.

The international community has formed a universal concept of human rights, the respect of which is elevated to the level of generally recognized principles of international law. This makes it obligatory for all states to observe and guarantee historically achieved human rights standards, which is a priority area for the common interests of the international community. Human rights are the main criterion for a democratic state. They are the basis of politics in relations with other states and with the entire world community. The internationalization of the human rights problem led to its development from the internal affairs of the state into a factor in international politics and law, into recognition of international jurisdiction on human rights issues.

The Constitution of the Republic of Kazakhstan establishes that international treaties ratified by the Republic have primacy over its laws (Article 4, Part 3), states that the people adopt the Constitution, wishing to take a worthy place in the world community (preamble) [1], thereby emphasizes the commitment of Kazakhstan to universal values.

Human rights are recognized by the entire international community as a universal human value. This implies the adoption by the states of a coordinated policy regarding the observance of the standards of individual rights and freedoms, the creation of special international bodies to monitor the observance by states of human and civil rights and freedoms.

One of the important regularity of the development of modern law is to deepen the interaction of international and domestic law. The deepening interaction of international and internal law determines the internationalization of domestic law, making up one of the main trends in the development of law in the twenty-first century [2; 115].

Internationalization of law can be understood as the convergence of the principles of law and national legislations, the deepening of the mutual influence of various legal systems. New world economic and social conditions dictate the need for compatibility of the legal systems of various states and their interaction with

each other. This is achieved, first of all, by recognizing the priority of international law over domestic, as well as the intensive change in domestic law under the influence of international.

#### *Methods and materials*

In the study of the topic of a scientific article were used: comparative legal, logical and legal, historical, systemic and structural, as well as special legal methods of interpretation of legal norms.

#### *Results*

The meaning and place of international norms in the legal system of Kazakhstan is determined by the provisions of the Constitution. The Constitution of the Republic of Kazakhstan is a document that incorporates all the most valuable, democratic, humane, which is contained in universally recognized international legal acts [3; 84].

In accordance with paragraph 2 of Art. 4 of the Basic Law of Kazakhstan, the Constitution has the highest legal force and direct effect throughout the territory of the Republic of Kazakhstan. Laws and other legal acts adopted in Kazakhstan cannot contradict it.

According to Art. 12 of the Constitution of the Republic of Kazakhstan, human rights and freedoms belong to everyone from birth, are absolute and inalienable (paragraph 2), human rights and freedoms in the Republic of Kazakhstan are recognized and guaranteed in accordance with the Constitution (paragraph 1).

The 1995 Constitution of the Republic of Kazakhstan has included international treaty obligations of the Republic in the system of law in force on its territory (Article 4, paragraph 1 of the Constitution); recognized the priority of international treaties ratified by the Republic over its laws; proclaimed that the procedure and conditions for the operation of international treaties to which Kazakhstan is a party are determined by the laws of the country; provided for the publication of all laws, international treaties to which the Republic is a party (Article 4, Clause 3 of the Constitution of the Republic of Kazakhstan).

The 1995 Constitution of the Republic of Kazakhstan established that Kazakhstan respects the principles and norms of international law, pursues a policy of cooperation and good neighborly relations between states, recognizes their equality and non-interference in each other's internal affairs, and the peaceful resolution of disputes (Article 8).

Article 54, part 1, paragraph 7 of the Kazakhstan Basic Law stipulates that the Parliament, in a separate meeting of the Chambers, by sequential consideration of issues, first in the Majilis and then in the Senate, adopts constitutional laws and laws, including ratifies and denounces international treaties of the Republic.

The Russian Constitution in Art. 15 part 4 has stated that universally recognized principles and norms of international law and international treaties are an integral part of its legal system. If other rules are established by an international agreement than are provided by law, then the rules of the international agreement shall apply [4].

Thus, the Constitution of the Russian Federation includes universally recognized norms and principles of international law and international treaties of the Russian Federation in the national legal system. However, it does not establish a hierarchy of these acts within the legal system itself. In part 4 of Article 15 of the Constitution of the Russian Federation refers only to the priority of the rules established by the international treaty of the Russian Federation over the rules stipulated by law.

The modern constitutional process is characterized by active integration processes in the field of interaction between international and domestic law. The interpenetration of the institutions of international and national law, including constitutional law as a special kind of domestic law, have two aspects: 1) the ratio of international and domestic law; 2) the assignment of part of sovereign state powers to supranational organizations [5; 38].

In connection with the internationalization of many areas of public life, the strengthening of integration processes, the establishment of international human rights standards and the international protection of these rights, there is an increase in the use of such sources of constitutional law as international legal acts — treaties, conventions, declarations, and acts of supranational organizations (EU) relating primarily to human rights.

As known, the norms of international law operate in a space that is regulated to varying degrees by the norms of domestic law. In this case, competition of norms and conflicts of application of law may arise. For objective and subjective reasons, the norms of national legislation can more adequately approach the regulation of specific legal relations than the norms of international law. This may be due to various kinds of factors: features of national development, historical traditions, a more perfect mechanism for regulating the

norms of national law due to its later adoption, etc. Therefore, the question of the incorporation of a particular norm of international law into domestic law should be decided individually, with reference to each specific legal act. At the same time, the national legal system should establish such general mechanisms in order to avoid possible conflicts and various approaches to regulating homogeneous legal relations.

Two main positions on this issue can be distinguished. The founder of the first approach is H. Kelsen. Its essence lies in the rule of international law, after which follow the norms of the Constitution, then the norms of constitutional law, after them — laws, etc. Another approach involves the primacy of the Constitution in relation to universally recognized norms and principles of international law.

The constitutions of many foreign states enshrine the principle of supremacy of international law over domestic law. For example, Article 5 of the 1991 Constitution of the Republic of Bulgaria establishes: «International treaties ratified in the constitutional order, promulgated and entered into force for the Republic of Bulgaria, are part of the domestic law of the country. They have priority over those norms of domestic law that contradict them» [6].

The Constitution of the French Republic in Section VI «On International Treaties and Agreements» states that treaties or agreements duly ratified or approved have force exceeding the force of domestic laws from the moment of publication, subject to the application of each agreement or contract by the other party (Article 55) [7].

The Constitution of Spain proclaimed that international treaties lawfully concluded and officially published in Spain form part of its domestic law. Their provisions may be repealed, amended or suspended only in the manner specified in the treaties themselves, or in accordance with the general rules of international law (Article 96/1) [8].

In accordance with the Dutch Constitution, international treaties are considered directly applicable law and take precedence over national law. So, according to article 93 of the Dutch Constitution, the provisions of international treaties and acts of international organizations, which are general regulatory and binding on all persons, are subject to application only after their publication [9].

Recognition of the priority of international law over domestic law has found expression in the Constitution of the Russian Federation. Part 4 of Art. 15 of the Constitution states that «universally recognized principles and norms of international law and international treaties of the Russian Federation are an integral part of its legal system. If other rules are established by international treaties of the Russian Federation than those provided by law, then the rules of the international treaty shall apply» [4].

At the same time, provisions are increasingly being included in the constitution of foreign countries aimed at creating a mechanism to ensure compliance of international treaties with the national constitution at the stages of their conclusion, ratification and enforcement. Thus, the Spanish Constitution also determines that in order to conclude a number of international treaties or agreements, state bodies must first obtain the permission of the General Cortes, including treaties or agreements affecting the amendment or repeal of any law or the adoption of legislative measures for their execution (Art. 94/1) [8].

Constitution of the Republic of Poland in Art. 89 part 1 contains a provision stating that «ratification by the Republic of Poland of an international treaty and its denunciation require the prior consent of the Sejm expressed in law, if the treaty concerns: 1) peace, union, political agreements or military arrangements; 2) civil freedoms, rights or obligations enshrined in this Constitution; 3) membership of the Republic of Poland in an international organization; 4) significant burden of the state financially; 5) issues regulated by law, or those on which the Constitution requires the publication of a law. «In Art. 90 part 1 provides that the Republic of Poland may, on the basis of an international agreement, transfer to the international organization or international body the competence of public authorities in certain cases [10].

Many new foreign constitutions contain a provision that the conclusion of a treaty that includes rules that are contrary to the constitution can take place only after a corresponding review of the constitution. For example, the Spanish Constitution of 1978 contains the norm that «the conclusion of an international treaty containing provisions contrary to the Constitution must be preceded by a review of the latter» (Article 95 of the Spanish Constitution) [8]. This provision is followed by states in which it is not constitutionally fixed.

The French Constitution finds expression the idea of harmonizing national sovereignty with the provisions of an international legal act or treaty. The constitution expressing the sovereignty of the state contains a list of treaties and agreements that can be ratified or approved only on the basis of law. If the Constitutional Council declares that any international obligation contains provisions that are contrary to the Constitution, then permission to ratify or approve it can be given only after the revision of the Constitution (Article 54) [7].

The provisions on the interaction of the two legal systems of domestic and international law were enshrined in the Constitutions of the Federal Republic of Germany, Austria, Portugal, Italy. So, the Federation can legislatively transfer the supreme power to interstate institutions (Article 24/1 of the Basic Law of Germany); general rules of international law are an integral part of Federation law, they have precedence over laws and directly generate rights and obligations for residents of the federal territory. Article 25 of the German Basic Law states that «universally recognized norms of international law are an integral part of federal law. They take precedence over laws and give rise to rights and obligations directly for persons residing in the territory of the Federation [11].

According to article 9–1 part 1 of the Austrian Constitution, «universally recognized norms of international law act as an integral part of federal law», and part 2 of this article says: «Based on a law or a state agreement, certain sovereign rights can be transferred to interstate institutions and their bodies» [12]. In accordance with article 10, part 1 of the Italian Constitution, «the rule of law of Italy is consistent with generally recognized norms of international law» [13].

The Constitution of the Netherlands allows the approval of an agreement that is in conflict with the Constitution, but this decision can be made not by ordinary, but by a qualified majority of 2/3 of the composition of the chambers of the General States (Article 91 of the Basic Law (Constitution) of the Kingdom of the Netherlands) [9].

Foreign legislation also establishes the possibility of parallel application of international law and national law. For example, the Portuguese Constitution of 1976 establishes that the unconstitutional in terms of substance or form nature of international treaties, does not impede their observance by Portugal. Thus, Article 277 part 2 of the Constitution of Portugal establishes: «Organic or formal unconstitutionality of international treaties does not prevent their application in the domestic legal system of Portugal...» [14].

In contrast to the above, new constitutions, the basic laws adopted at an earlier stage of development differently regulate the issue of the correlation of international and national law. So, article 6 of the US Constitution, adopted in 1787 and still in force, establishes the priority of the US Constitution and laws throughout the country, however, along with treaties concluded by the federal government [15]. Thus, the US Constitution sets its standards above the treaties. Moreover, this norm has been repeatedly confirmed in decisions of the US Supreme Court [16; 14].

With regard to international treaties, the Constitutions of many foreign countries establish the priority value of an international treaty in influencing domestic relations, an international treaty is included as an integral part of the country's legal system. For example, the US Constitution proclaimed an international treaty part of the country's law. Section 6 also provides that «this Constitution and the laws of the United States issued to enforce it, as well as all treaties concluded or to be concluded by the United States, are the highest laws of the country, and judges of each state are required to comply with them, at least in the Constitution and laws of individual states there were conflicting resolutions» [15].

The domestic law of foreign states makes a distinction between existing generally accepted principles and norms of international law in the form of custom, on the one hand, and treaties on the other. The generally recognized principles and norms of international law in the manner of general transformation are included in the internal law of the country. Because of their universality and the objective need for their conflict with national law, they rarely arise. Therefore, states pay particular attention to the status of treaty norms in national law [17; 226].

US litigation puts customary international law below law. So, the decision of the US Supreme Court in the case of «Packbot Havana» (1900) established that customary international law is part of the country's law for the application by the courts, «unless there is an international treaty or other normative act of the executive or legislative branch or court – solution». U.S. courts still adhere to this rule. As you can see, ordinary rules are even inferior to judicial decisions, case law [16; 12–13].

The question of ordinary rules in the new legal systems of Europe is being resolved in a different way. In Germany, the norms of general international law are not only included in the law of a country, but also prevail over laws. In Holland, all customary international law is applicable. Article 8 of the Portuguese Constitution establishes: «the norms and principles of general or customary international law are an integral part of Portuguese law» [14].

The Russian Constitution established the special status of universally recognized principles and norms of international human rights law. So in article 17 part 1 of the Basic Law of the Russian Federation it is stipulated: in the Russian Federation the rights and freedoms of man and citizen are recognized and guaranteed in accordance with generally recognized principles and norms of international law and in accordance

with this Constitution. Thus, universally recognized principles and norms of international law in the field of human rights are put in a priority position before the Constitution of Russia [4].

In constitutional law, references to international legal documents are also practiced, as a result of which such acts acquire legal force. Similar references can be found in the Portuguese Constitution: «The provisions contained in the Constitution and laws concerning the fundamental rights of citizens must be interpreted and in accordance with the Universal Declaration of Human Rights» (article 16) [14].

In some foreign countries, an international legal act cannot be a source of national law, including constitutional law. Its application requires implementation, that is, the publication of the corresponding law (for example, the Constitution of India, Malaysia). Thus, according to Article 76 par.1 a) of the Constitution of Malaysia, the Parliament may adopt laws with the aim of fulfilling an agreement, agreement or convention between the Federation and another state, a decision adopted by an international organization of which the Federation is a member [18]. In accordance with Article 253 of the Constitution of India «Legislation for the Implementation of International Agreements», Parliament has the right to issue any law in respect of all or any part of the territory of India in connection with the implementation of any contract, agreement or convention with any other country or countries or any decision adopted by an international conference, international association or other body [19].

### *Discussion*

Globalization makes certain changes in the content of a political function from the point of view of the state's obligation to provide optimal conditions for the comprehensive and most complete development of the institutions of democracy and democratic management of society. It should be agreed with prof. I.I. Lukashuk is that in our time there is a globalization of democratic values. Democracy is recognized as a principle of universal significance. The right to it becomes a global law, which will be increasingly supported by the international community as a whole [20; 23]. International law encourages the democratic organization of state power. These norms are consistently implemented in the Constitution of the Republic of Kazakhstan [3; 81].

Speaking about the impact of international law on national legislation, it should be taken into account, as G.S. Sapargaliev emphasizes, that the norms of international law did not take shape on their own, but incorporated the most progressive legislation of various countries on state and legal construction. Now these norms in a new quality, expressing not the will of the peoples of individual countries, but the combined will of peoples represented by the advanced international public, are again returning to individual states [3; 77].

In this regard, we will consider the issue of the concept of «generally recognized principles and norms of international law». According to the Russian scientist I.I. Lukashuk, the basic principles of international law are understood as socially determined generalized norms, ideas that reflect the characteristic features of the regulatory system and its main content [16; 82]. In accordance with the position of this author, at a certain stage of social development, these ideas, which previously existed in the form of moral and political doctrines, were enshrined in the UN Charter and international legal acts developing it [16; 83].

A.N. Talalayev singles out universally recognized norms in international law, that is, such norms that are officially recognized by all or almost all states, regardless of their social structure, as universally binding. He defines the universally recognized principles of international law as the most important general, universally recognized, peremptory norms of international law [21; 5]. V.G. Boyarshinov claims that «the significance of universally recognized principles and norms of international law lies precisely in the fact that they are created by the international community as a whole and become binding on all states» [22; 60].

According to international practice, the state can not invoke the constitution to justify failure to fulfill international obligations. This principle was enshrined in 1932 in the decision of the Permanent Court of International Justice in the case «Treatment of Polish citizens in Danzig» [16; 14]. This provision has also been enshrined in the norm of the Constitution of the Republic of Kazakhstan, which refers to the mandatory nature of international treaties concluded by Kazakhstan for Kazakhstan.

An analysis of the content of the constitutions of foreign countries shows that, despite the existing differences of a national, historical nature, the processes of rapprochement of the constitutions of different countries are obvious in a substantial sense. It is important to note, as prof. K.K. Aytkhozhin, that foreign constitutions, mainly reinforcing the primacy of international law in relation to domestic law, do not say, like paragraph 1 of Article 4 of the Constitution of the Republic of Kazakhstan, the primacy of international law in relation to the constitutions themselves [5; 38]

The literature often expresses the opinion that the constitutions of some states recognized the primacy and direct effect of international law. In this regard, prof. I.I. Lukashuk rightly notes that this is not entirely true: the Constitution did not recognize the alleged primacy of international law, but established it themselves [17; 224].

Issues of defining the concept and establishing the normative content of «universally recognized principles and norms of international law» cause numerous disputes among specialists in international law. The interpretation of the concept of «universally recognized principles and norms of international law» in the domestic legal system should take into account the particularities of the international legal system. At the international level, in international legal literature, the concept of «generally recognized principles of international law» means general customary international law.

The priority of the norms of ratified international treaties in the Republic of Kazakhstan in relation to the conflicting rules of the law is quite clearly defined by the Constitution, while the hierarchical position of «generally recognized principles and norms of international law» in the legal system of many states, including Kazakhstan, is controversial. What meaning should be given to the expression «universally recognized principles and norms of international law»? Understanding the generally recognized principles and norms of only international legal customs, in our opinion, is incorrect, since international legal customs is only one form of expression of international law. The generally recognized principles and norms of international law have another form of expression — international treaties.

The generally recognized principles and norms of international law are the most significant rules of conduct. Many of them are imperative, which determines their special place in the hierarchy of international legal norms.

Given the importance of the problem of ensuring human rights and freedoms prof. V. Kartashkin expressed a proposal on the development and adoption of a Resolution by the UN General Assembly «On the Rule of International Law», in which it should call on all states of the world to recognize the priority of international law over domestic law. In this case, the author believes, basic human rights and freedoms will be universally recognized and will be protected everywhere [23; 85].

The Constitution of the Republic of Kazakhstan in the field of human rights is fully based on universally recognized norms of international law. At the same time, it would be advisable to consider strengthening the legal status of this category of norms and including in the content of the Basic Kazakhstan Law the provision that the rights and freedoms of man and citizen in the Republic of Kazakhstan are recognized and guaranteed in accordance with generally recognized principles and norms of international law and in accordance with the Constitution, similar to the provision of the Russian Constitution.

### *Conclusions*

Analysis of legal regulation and theoretical approaches to the content of the principles of electoral law allows us to distinguish their essential characteristics and types. Free elections are based on a conscious expression of will, transparency and openness of elections. Under the condition that all principles of electoral law are observed, the results of the expression of will in the elections are reliable, and the elected authorities are legitimate. International treaties are a source of guarantees of electoral rights of citizens, establishing general principles, conditions for their implementation, as well as obliging states to provide the necessary legal remedies.

Globalization dictates the need for all states to provide optimal conditions for the comprehensive and full development of democratic institutions. The interaction of international and domestic law systems is due to the objective nature of the mutual influence and dependence between the foreign and domestic policies of each state, the development trends of the world community as a whole, and the fact that states are the creators of both national and international legal norms [24; 79–80].

An analysis of the content of the constitutions of foreign countries and the Basic Law of Kazakhstan shows that the Constitutions reflect progressive trends in the development of constitutional law, including the provision of international law with priority over domestic laws. The solution of the issue of primacy and direct effect of international law is in the competence of national law. Constitutional law is the basis of the legal system of the state. The norms of the Constitution have the highest legal force in the system, the primacy in relation to all other norms.

In some foreign countries, an international legal act cannot be a source of national, including constitutional, law. its application requires the publication of the relevant law. In another group of states, ratified international treaties form part of domestic law and, therefore, their provisions have a direct effect. In the latest

constitutions of a number of countries, there is a direct indication that the relevant international human rights instruments are part of domestic law.

In the development of the interaction of constitutional and international law, two important trends can be distinguished: firstly, the recognition of universally recognized principles, norms and standards of international law, primarily in the field of human rights, and secondly, the recognition of the priority of international law in the country's legal system.

There is a need for further scientific development of theoretical and practical issues regarding the concept and content of universally recognized principles and norms of international law, standards of democracy, determining their place in the hierarchy of national legal systems.

The Constitution of the Republic of Kazakhstan is the legal basis for the formation of national legislation focused on universally recognized norms of international law. Domestic Basic Law as a whole corresponds to the world trends in the development of constitutional law, due to the general globalization and internationalization of law. The Constitution of Kazakhstan laid a good foundation for the improvement of the legal system of the country, including taking into account international law. In order to give special status to the universally recognized principles and norms of international law on human rights and freedoms, it would be possible to include in the Constitution of the Republic of Kazakhstan the provision that the rights and freedoms of a person and a citizen in the Republic of Kazakhstan are recognized and guaranteed in accordance with generally recognized principles and norms of international law and in accordance with Constitution.

The globalizing world in its legal development is characterized by two interconnected processes: the internationalization of domestic regulation, especially in the humanitarian sphere, and the tendency to constitutionalize international relations. The trend of constitutionalization of international relations reflects the natural processes of formation along with the national also transnational (regional, continental and even global) constitutionalism, the legal basis of which are peremptory norms of international law, which have been universally recognized [25; 6].

## References

- 1 Конституция Республики Казахстан 1995 г. [Электронный ресурс]. — Режим доступа: [http://www.akorda.kz/ru/official\\_documents/constitution](http://www.akorda.kz/ru/official_documents/constitution)
- 2 Лукашук И.И. Взаимодействие международного и внутригосударственного права в условиях глобализации / И.И. Лукашук // Журнал российского права. — 2002. — № 3. — С. 113–119.
- 3 Сапарғалиев Г. Конституционное право Республики Казахстан / Г. Сапарғалиев. — Алматы: Жеті жарғы, 2002. — 528 с.
- 4 Конституция Российской Федерации [Электронный ресурс]. — Режим доступа: <http://www.constitution.ru/>
- 5 Айтхожин К.К. О конституционных реформах: Казахстан и мировой опыт / К.К. Айтхожин // Юрист. — 2007. — № 2. — С. 37–41.
- 6 Конституция Болгарии [Электронный ресурс]. — Режим доступа: <https://www.parliament.bg/en/const/>
- 7 Конституция Французской Республики [Электронный ресурс]. — Режим доступа: <https://worldconstitutions.ru/?p=138>
- 8 Конституция Испании [Электронный ресурс]. — Режим доступа: <https://worldconstitutions.ru/?p=149>
- 9 Конституция Королевства Нидерландов [Электронный ресурс]. — Режим доступа: [http://www.concourt.am/armenian/legal\\_resources/world\\_constitutions/constit/nethrlnld/holand-r.htm](http://www.concourt.am/armenian/legal_resources/world_constitutions/constit/nethrlnld/holand-r.htm)
- 10 Конституция Республики Польша [Электронный ресурс]. — Режим доступа: <http://www.worldconstitutions.ru/?p=112>
- 11 Основной Закон Федеративной Республики Германии [Электронный ресурс]. — Режим доступа: [http://www.concourt.am/armenian/legal\\_resources/world\\_constitutions/constit/germany/german-r.htm](http://www.concourt.am/armenian/legal_resources/world_constitutions/constit/germany/german-r.htm)
- 12 Конституция Австрийской Республики [Электронный ресурс]. — Режим доступа: <http://worldconstitutions.ru/?p=160>
- 13 Конституция Итальянской Республики [Электронный ресурс]. — Режим доступа: <https://worldconstitutions.ru/?p=148>
- 14 Конституция Португальской Республики [Электронный ресурс]. — Режим доступа: [http://www.concourt.am/armenian/legal\\_resources/world\\_constitutions/constit/portugal/portug-r.htm](http://www.concourt.am/armenian/legal_resources/world_constitutions/constit/portugal/portug-r.htm)
- 15 Конституция США [Электронный ресурс]. — Режим доступа: <https://worldconstitutions.ru/?p=168>
- 16 См.: Лукашук И.И. Нормы международного права в правовой системе России / И.И. Лукашук. — М.: Спарк, 1997. — 90 с.
- 17 Лукашук И.И. Международное право. Общая часть: учеб. / И.И. Лукашук. — М.: БЕК, 1996. — 371 с.
- 18 Конституции Малайзии [Электронный ресурс]. — Режим доступа: <https://worldconstitutions.ru/?p=655>
- 19 Конституции Индии [Электронный ресурс]. — Режим доступа: [http://www.concourt.am/armenian/legal\\_resources/world\\_constitutions/constit/india/india—r.htm#sub\\_para\\_N\\_11000](http://www.concourt.am/armenian/legal_resources/world_constitutions/constit/india/india—r.htm#sub_para_N_11000)
- 20 Лукашук И.И. Глобализация, государство, право, XXI век / И.И. Лукашук. — М.: Спарк, 2000. — 262 с.

- 21 Талалаев А.Н. Соотношение международного и внутригосударственного права в Конституции Российской Федерации / А.Н. Талалаев // Журн. междунар. права. — 1994. — № 4. — С. 3–9.
- 22 Бояршинов Б.Г. Международные договоры в правовой системе Российской Федерации / Б.Г. Бояршинов // Законодательство. — 1997. — № 4. — С. 58–61.
- 23 Карташкин В.А. Права человека: международно-правовая защита в условиях глобализации / В.А. Карташкин. — М.: Норма, 2009. — 289 с.
- 24 Международное публичное право: учеб. / под ред. К.А. Бекяшева. — М.: Проспект, 1999. — 640 с.
- 25 Эбзеев Б.С. Глобализация и становление транснационального конституционного права / Б.С. Эбзеев // Государство и право. — 2017. — № 1. — С. 5–15.

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## Мемлекетішілік және халықаралық құқықтардың арақатынастарының конституциялық-құқықтық аспектілері

Мақалада Қазақстандағы және шет елдердегі мемлекетішілік және халықаралық құқықтың арақатынасын конституциялық құқықтық реттеудің мазмұны мен ролі қарастырылған. Авторлар ұлттық және халықаралық құқықтың арақатынасын конституциялық реттеудің отандық және шетелдік ерекшеліктерін көрсетеді, Негізгі Заңдардағы ішкі және халықаралық құқықтың арақатынасын бекітудегі заң шығарушылардың әртүрлі тәсілдерін айқындайды. Мақалада, сонымен қатар, халықаралық және конституциялық құқықтың өзара әрекеттесу мәселелері көрсетілген. Авторлар шет елдердің және Қазақстан Республикасының Конституцияларымен халықаралық құқық нормаларын мемлекеттердің құқықтық жүйелеріне енгізумен байланысты теориялық және тәжірибелік мәселелерге назар аударады. Салыстырмалы-құқықтық талдау негізінде шет елдердің конституцияларында мемлекетішілік және халықаралық құқықтың арақатынасын бекіту ерекшеліктері қарастырылды. Және де жалпы халықаралық құқық пен халықаралық шарттардың нормаларын әртүрлі елдердің конституцияларында бекіту мәселелері зерттелген. Қазақстан Республикасының Конституциясы жалпыға бірдей жаһандану мен құқықтың интернационализациясына байланысты конституциялық құқықты дамытудың әлемдік тенденцияларына сәйкес келетіндігі; халықаралық құқықтың жалпыға бірдей танылған қағидалары мен нормаларының түсінігі мен мазмұнына, олардың мемлекеттердің құқықтық жүйелерінің иерархиясындағы орнына қатысты теориялық және тәжірибелік сұрақтарының әрі қарай ғылыми дамыту қажеттілігі жөнінде қорытынды жасалған. Конституциялық құқықты одан әрі жетілдірудің бағыттарының бірі ретінде конституциялық-құқықтық заңнамаға адам құқықтары туралы жалпыға бірдей танылған қағидалар мен нормалар туралы ережелерді енгізу туралы ұсыныс жасалған.

*Кілт сөздер:* Конституция, конституциялық-құқықтық заңнама, мемлекетішілік және халықаралық құқықтың арақатынасы, құқықтық жүйе, Конституцияның басымдығы.

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## Конституционно-правовые аспекты соотношения внутригосударственного и международного права

В статье рассмотрены содержание и роль конституционно-правового регулирования соотношения внутригосударственного и международного права в Казахстане и зарубежных странах. Авторами показана отечественная и зарубежная специфика конституционной регламентации соотношения национального и международного права, обозначены различные подходы законодателей к закреплению соотношения внутреннего и международного права в Основных Законах. В статье затронуты также проблемы взаимодействия международного и конституционного права. Авторами освещены теоретические и практические вопросы, связанные с включением Конституциями зарубежных стран и Республики Казахстан норм международного права в правовые системы государств. На основе сравнительно-правового анализа раскрыты особенности закрепления соотношения внутреннего и международного права в конституциях зарубежных стран. Изучены вопросы закрепления норм общего международного права и международных договоров в Конституциях различных стран. Сделаны выводы, в частности, о том, что Конституция Республики Казахстан в целом соответствует мировым тенденциям развития конституционного права, обусловленным всеобщей глобализацией и интернационализацией права; о необходимости дальнейшей научной разработки теоретических и практических вопросов, касающихся, например, понятия и содержания общепризнанных принципов и норм международного права, их места в иерархии правовых систем государств. В качестве одного из направлений дальнейшего совершенствования конституционно-правового законодательства сформулировано предложение о включении в конституционно-правовое законодательство положения об общепризнанных принципах и нормах международного права о правах человека.

*Ключевые слова:* Конституция, конституционно-правовое законодательство, соотношение внутригосударственного и международного права, правовая система, приоритет Конституции.

## References

- 1 Konstitutsiia Respubliki Kazakhstan ot 30 avhusta 1995 hoda (1995) [The Constitution of the Republic of Kazakhstan]. (n.d.) *akorda.kz*. Retrieved from [http://www.akorda.kz/ru/official\\_documents/constitution](http://www.akorda.kz/ru/official_documents/constitution) [in Russian].
- 2 Lukashuk, I.I. (2002). Vzaimodeistvie mezhdunarodnogo i vnutriosudarstvennogo prava v usloviakh hlobalizatsii [The interaction of international and domestic law in the context of globalization]. *Zhurnal rossiiskogo prava — Journal of russian law*, 3, 113–119 [in Russian].
- 3 Sapargaliev, G. (2002). *Konstitutsionnoe pravo Respubliki Kazakhstan [Constitutional law of the Republic of Kazakhstan]*. Almaty: Zhety zharhy [in Russian].
- 4 Konstitutsiia Rossiiskoi Federatsii [Constitution of the Russian Federation]. (n.d.) *constitution.ru*. Retrieved from <http://www.constitution.ru> [in Russian].
- 5 Aithozhin, K.K. O konstitutsionnykh reformakh: Kazakhstan i mirovoi opyt [About constitutional reforms: Kazakhstan and world experience]. *Yurist — Lawyer*, 2, 37–41 [in Russian].
- 6 Konstitutsiia Bolharii [Bulgarian Constitution]. (n.d.) *parliament.bg*. Retrieved from <http://www.parliament.bg/en/const/>
- 7 Konstitutsiia Frantsii [French Constitution]. (n.d.) *worldconstitutions.ru*. Retrieved from <http://www.worldconstitutions.ru/?p=138> [in Russian].
- 8 Konstitutsiia Ispanii [Constitution of Spain]. (n.d.) *worldconstitutions.ru*. Retrieved from <http://www.worldconstitutions.ru/?p=149> [in Russian].
- 9 Konstitutsiia Korolevstva Niderlandov [Constitution of the Kingdom of the Netherlands]. (n.d.) *worldconstitutions.ru*. Retrieved from <http://www.worldconstitutions/constit/nethrld/holand-r.htm> [in Russian].
- 10 Konstitutsiia Respubliki Polsha [Constitution of the Republic of Poland]. (n.d.) *worldconstitutions.ru*. Retrieved from <http://www.worldconstitutions.ru/?p=112> [in Russian].
- 11 Osnovnoi Zakon Federativnoi Respubliki Hermanii [Basic Law of the Federal Republic of Germany]. (n.d.) *concourt.am*. Retrieved from [http://www.concourt.am/armenian/legal\\_resources/world\\_constitutions/constit/germany/german-r.htm](http://www.concourt.am/armenian/legal_resources/world_constitutions/constit/germany/german-r.htm) [in Russian].
- 12 Konstitutsiia Avstriiskoi Respubliki [Constitution of the Republic of Austria]. (n.d.) *worldconstitutions.ru*. Retrieved from <http://worldconstitutions.ru/?p=160> [in Russian].
- 13 Konstitutsiia Italiiskoi Respubliki [Constitution of the Italian Republic]. (n.d.) *worldconstitutions.ru*. Retrieved from <https://worldconstitutions.ru/?p=148> [in Russian].
- 14 Konstitutsiia Portuhalskoi Respubliki [Constitution of the Portuguese Republic]. (n.d.) *concourt.am*. Retrieved from [http://www.concourt.am/armenian/legal\\_resources/world\\_constitutions/constit/portugal/portug-r.htm](http://www.concourt.am/armenian/legal_resources/world_constitutions/constit/portugal/portug-r.htm) [in Russian].
- 15 Konstitutsiia Soedinennikh Shtatov Ameriki [United States Constitution]. (n.d.) *worldconstitutions.ru*. Retrieved from <https://worldconstitutions.ru/?p=168> [in Russian].
- 16 Lukashuk, I.I. (1997). *Normy mezhdunarodnogo prava v pravovoi sisteme Rossii [Norms of international law in the legal system of Russia]*. Moscow: Spark [in Russian].
- 17 Lukashuk, I.I. (1996). *Mezhdunarodnoe pravo. Obshchaia chast [International law. Common part]*. Moscow: BEK [in Russian].
- 18 Konstitutsiia Malaizii [Constitution of Malaysia]. (n.d.) *worldconstitutions.ru*. Retrieved from <https://www.worldconstitutions.ru/?p=655> [in Russian].
- 19 Konstitutsiia Indii [Constitution of india]. (n.d.) *concourt.am*. Retrieved from [http://www.concourt.am/armenian/legal\\_resources/world\\_constitutions/constit/india/india—r.htm#sub\\_para\\_N\\_11000](http://www.concourt.am/armenian/legal_resources/world_constitutions/constit/india/india—r.htm#sub_para_N_11000) [in Russian].
- 20 Lukashuk, I.I. (2000). *Hlobalizatsia, hosudarstvo, pravo, XXI vek [Globalization, State, Law, XXI Century]* Moscow: Spark [in Russian].
- 21 Talalaev, A.N. (1994). Sootnoshenie mezhdunarodnogo i vnutriosudarstvennogo prava v Konstitutsii Rossiiskoi Federatsii [Correlation of international and domestic law in the Constitution of the Russian Federation]. *Zhurnal mezhdunarodnogo prava — Journal of international law*, 4, 3–9 [in Russian].
- 22 Boiarshinov, B.G. (1997). Mezhdunarodnye dohovory v pravovoi sisteme Rossiiskoi Federatsii [International treaties in the legal system of the Russian Federation]. *Zakonodatelstvo — Legislation*, 4, 58–61 [in Russian].
- 23 Kartashkin, V.A. (2009). *Prava cheloveka: mezhdunarodno-pravovaia zaschita v usloviakh hlobalizatsii [Human rights: international legal protection in the context of globalization]*. Moscow: Norma [in Russian].
- 24 Bekiashev, K.A. (Eds.). (1999). *Mezhdunarodnoe publichnoe pravo [International public law]*. Moscow: Prospekt [in Russian].
- 25 Ebzeev, B.S. (2017). Hlobalizatsia i stanovlenie transnatsionalnogo konstitutsionnogo prava [Globalization and the emergence of transnational constitutional law]. *Hosudarstvo i pravo — State and law*, 5–15 [in Russian].