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Theoretical and Methodological Foundations of Research of the Process of Implementation of the Norms of International Law Regulating Objects of Intellectual Property into National Legislation and Mechanisms of Implementation

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Annotation. This article discusses the theoretical and methodological foundations of the study of the process of implementation of the norms of international law governing objects of intellectual property in national legislation and implementation mechanisms. It is analyzed the norms of international law in the field of intellectual property from the point of view of further implementation in national legislation.

Key words: implementation methods, legal system, convention, implementation, international law, implementation, patents, intellectual property, utility model, copyright, international treaty, invention.

In the system of international norms of law, an important assistant to any sovereign state is the institution of implementation of international legal norms. Its main purpose for each national legal system, in particular in the field of intellectual property, is to create the necessary legal conditions conducive to the implementation of international obligations assumed. Both in the domestic and foreign policy of the Republic of Uzbekistan, there is a desire to bring the norms and principles of the national system of law in the field of intellectual property to the level of similar international norms and principles. Despite the fact that our republic is a party to thirteen international conventions in the field of intellectual property.

For the first time, the term "implementation" was comprehensively considered in the monograph of the Soviet international lawyer A.S. Gavardevsky, who defined implementation as a purposeful organizational and legal activity of states undertaken individually, collectively or within the framework of an international organization in order to timely and fully implement their obligations in accordance with international law.

As A.N. Morozov, the very concept of "implementation of international treaties" is the activity of the state, represented by its authorized bodies, aimed at implementing the obligations arising from these international treaties.

The concept of implementation was created by the application of the norm of one legal system in another legal system. Many lawyers have the notion that the implementation of norms and principles is only the implementation of international treaties and agreements into the national legislative system. But this is not so, the concept of implementation implies the interchange of norms and principles between national and international legal systems.

Law enforcement practice is a unity of the power activities of the competent authorities, aimed at issuing individual-specific prescriptions, and the legal experience developed in the course of such activities. It is practice that makes it possible to ensure the choice of the legal norm to be applied (to qualify) and to solve certain situations by interpreting the norms of international law and national law on the basis of accumulated experience.

The implementation of legal systems occurs through mutual influence, additions with legal compatibility, regardless of whether it is of a primary nature. The implementation of legal systems is the desire for harmonization and the expression of society's need for the rule of law and a certain level of legal awareness and legal culture.

A.V. Nikolaenko notes the following important details in his study: “The problem of studying the implementation of international law norms in national legal systems is certainly relevant, which is explained by the controversy of theoretical and legislative provisions regarding the mechanism for recognizing generally recognized principles and norms of international law, the norms of international treaties in the

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domestic legal system and, as a result, the possibility of their application on the territory of a particular state. The concept of implementation is very meaningful and includes the entire diverse process of implementing the goals of international norms by states. The main components of this process are: the expression of the state's consent to be bound by an international treaty and then the application of the norms of such an treaty within the framework of international or domestic law with its practical implementation in the future. In many cases, the implementation is carried out by the subjects of international law, using the means and methods of foreign policy, namely the international legal norms laid down, for example, in the UN Charter.

According to K. Bel-Velka, there are several main reasons for the unification and harmonization of law, which, in particular, include: 1) the process of further globalization; 2) differences between national law, which lead to additional costs when performing cross-border transactions; 3) insufficiency of national law for effective regulation of cross-border relations; 4) the need of law enforcers for more cross-border rules.

The implementation of the norms of international law in the field of intellectual property is a complex and multidimensional phenomenon that implements the introduction of international obligations into the internal system of law of the state. Thus, the activity of ensuring the implementation of certain prescriptions of a humanitarian nature is associated with the coordination of authorized authorities in the field of intellectual property. The implementation mechanism is associated with the transformation and adaptation of the norms of one legal system to another. The transformation of norms adopted from another legal order of rules has as its consequence: the transition from the international legal system to the national one, first of all, is associated with changes in the content of the legal prescription of norms in the field of intellectual property

In the field of intellectual property, the Republic of Uzbekistan today is a party to the main universal international treaties.

The application of the provisions of international treaties of the Republic of Uzbekistan at the domestic level and the establishment of a hierarchy of international treaties in the system of regulatory legal acts of the Republic of Uzbekistan is done in the Law of the Republic of Uzbekistan dated February 6, 2019 No. ZRU-518 “On international treaties of the Republic of Uzbekistan”, as well as a number of other laws Republic of Uzbekistan.

Thus, Article 3 of this Law establishes that international treaties of the Republic of Uzbekistan, along with the generally recognized principles and norms of international law, are an integral part of the legal system of the Republic of Uzbekistan.

Decree of the Cabinet of Ministers of the Republic of Uzbekistan No. 473 "On the procedure for preparing draft international treaties and fulfilling the obligations of the Republic of Uzbekistan under international treaties" dated December 12, 2000 was one of the main by-laws for the implementation of this provision.

In order to include international norms of law into domestic ones, their harmonization, the legislator takes a number of measures. They are very varied. In the legal literature are called: 1) reference; 2) reception; 3) unification; 4) transformation; 5) creation of a special legal regime; 6) cancellation of domestic acts that are contrary to international obligations.

The first and most important step in implementation should be considered the accession of member states to international conventions. Conventions must not only be ratified, but also simultaneously incorporated into national legislation. In this way, their implementation will be ensured.

In legal and scientific practice and theory, there are a number of methods for implementing international legal principles and norms in the national legislative system. As legal studies show, there are 5 of them. These are:

- accession;
- compliance;
- reference;
- usage;
- execution.

Let us note here that in the event that states fail to fulfill their international obligations, the implementation process loses its effectiveness, which immediately devalues the very international legal

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regulation. For this reason, there is a timely need to create conditions for the use of various organizational and legal means, which in the future form a specific mechanism for the implementation of the norms of international law in the domestic legal regime of an independent state.

The mechanism for the implementation of the norms of international law governing objects of intellectual property is a set of normative and organizational and legal means that are used by subjects of international law at the international and national levels in order to implement the norms. Organizational and legal means of ensuring the implementation of international law at the international level exist in certain forms that can be classified into three groups: 1) international procedural legal means of implementing international law; 2) international institutional legal means of implementing international law; 3) international legal means of implementing international law, applied by the state individually or jointly with other states-participants of international treaties. The main methods of implementation are incorporation, general or private reference, adaptation, transformation.

The concept of implementation is one of the most common theories of law, mediating a set of measures aimed at recognizing the legal force and organizational support for the implementation of international legal norms within the state. Implementation is the most important component of the effectiveness of international and domestic law.

Considering the above definition in the context of the problem of implementing the norms of international law in the field of intellectual property, it should be noted that it does not cover the norms of the entire spectrum of legal relations arising from the implementation of these norms at the international level. This remark concerns, first of all, the role of the state as a subject of international law in this process.

D. Rauschning, speaking about the application of the norms of international law in the national legal system, points out that “there are conditions for direct application: 1) the norms of the treaty must be self-executing, 2) they must be the current norms of international law” .

One form of implementation that is most commonly used is transformation. It should be noted that the concept and forms of transformation were studied in great detail in the works of two such well-known international lawyers as S.V. Chernichenko, and E.T. Usenko. They both adhere to a single concept regarding the fact that it is within the framework of transformation that all forms of translating international legal norms into national legislation take place. S.V. Chernichenko emphasizes that transformation always takes place when national law is brought into harmony

esponsibility with international, in the form of official (legally formalized) and informal (not legally formalized) transformation, as well as the method of implementation, both automatic and non-automatic. Depending on the scale of the process, he distinguishes general, particular and individual transformation. From the point of view of legal technique, he distinguishes incorporation, legitimation and reference.

This form of implementation was considered in great detail by E.T. Usenko, who noted: "For international law to acquire legal force within national law, it must acquire the force of a national legal norm through the adoption of a national legal act." He divides the transformation into two types: general and special. He defines the general transformation as the establishment by the state in its internal law of a general norm that gives international legal norms the force of domestic action. He defines special transformation as the process of giving by the state to specific norms of international law the force of domestic action by reflecting them in the law literally in the form of provisions or by expressing normative consent to their application.

L.P. Anufrieva defines the essence of transformation in that the state, using its powers, ensures the fulfillment of its international legal obligations.

Another form of implementation is incorporation, the essence of which is that the norms of international law become part of domestic law automatically, without requiring the adoption of any regulatory legal acts. S.V. Chernichenko and L.P. Anufriev characterize incorporation as a process in which the norm of international law is literally repeated in national law.

The implementation of the norms of international law should be understood as their implementation in national law. So, part 1 of Art. 25 of the Paris Convention for the Protection of Industrial Property states: "Each country that is a party to this Convention undertakes to take the necessary measures in accordance with its Constitution to ensure the application of this Convention."

Part 1, Article 14 of the WIPO Copyright Treaty emphasizes that “The Contracting Parties undertake

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to take, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty" . In turn, in part 1 of Art. 23 of the WIPO Performances and Phonograms Treaty "The Contracting Parties undertake to take, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty."

Often, incorporation, ratification, adaptation, transplantation, transformation, implementation, unification, etc. are called as a means of giving force to international legal norms of domestic action.

The domestic implementation mechanism is the final process for the implementation of international legal norms into national legislation. The achievement of the final goal of implementing international legal norms into national legislation depends on an effective domestic mechanism. The effectiveness of the domestic mechanism is also based on the timely use of the organizational and legal means that exist in the national legislation, in the course of which certain legal relations are formed within the framework of the internal legal order. The basis for the emergence of these legal relations are international obligations assumed by the state as a subject of international law.

Due to the lack of clarity in the normative legal documents, there is an active discussion in the scientific literature on the issue of direct action. The doctrine often expresses different, but sometimes comparable opinions on fundamental points. "In order for a norm of international law to be applied as part of the law of a country, it must be suitable for this or, as they say, self-executing. It must be formulated in such a way that it can be applied directly and does not require the issuance of an internal act specifying it.

If we compare the study of the experience of developed democratic countries in the field of fixing the priority of international law norms in the main legislative procedure, it shows that in the constitutions of states it is directly written that the generally recognized principles and norms of international law are part of national law (including constitutional law), and in the case of discrepancies with the norms of national legislation take precedence over him. Article 55 of the French Constitution of 1958 states: "Treaties or agreements, duly ratified or approved, have force exceeding internal laws ...". Similar regulations are known to the legal systems of other states. The Basic Law of Germany recognizes "inviolable and inalienable human rights as the basis of every human community, peace and justice in the world" (Article 1.2). Moreover, according to Art. 25 of the Basic Law of Germany: "General rules for international th law are an integral part of the law of the Federation. They have advantages over laws and directly give rise to rights and obligations for the inhabitants of the federal territory.

The interaction of two normative formations, national and international, loses its functional character with the actual penetration of international law into the national legal system. This phenomenon occurs due to the fact that the result of any international legal act is the achievement of a certain degree of regulation of any relations that arise between certain subjects of the intrastate structure of one or more republics (international legal regulation of human rights issues, the procedure for concluding and executing foreign economic transactions, protection of intellectual property rights, etc.).

At the same time, in accordance with the theory of implementation, the point is not to transfer the norms of international law into the norms of the national legal order, but to apply the former within a given state with the sanction of the latter. In cases where domestic law authorizes the application of the rules of international treaties within the country, the problem of so-called self-executing and non-self-executing treaties arises.

Public relations that are not regulated by specific norms, if necessary, turn to the norms of self-executing contracts for concretization. This is all thanks to their detailed workmanship and completeness.

The status of international treaties in the Constitutions of some states is placed on a par with national legislation, and sometimes even has a significant priority over it. These states include France, USA, Germany, Spain and others. The practice of the aforementioned countries can show that the agreement in force in the sphere of regulation of relations between national legal entities of different state affiliation, as usual, is self-executing.

The application of the rules of such an agreement, as is customary, is authorized by the state for internal purposes, for the full and not reproachful execution of which an act of national legislation is required, which will disclose in detail the contents of the above norms. These are the internal acts that are mentioned in the Civil Code of the Republic of Uzbekistan and the Law of the Republic of Uzbekistan "On International Treaties of the Republic of Uzbekistan". This need can be substantiated by the fact that non-

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self-executing international treaties, most often, are of a single nature, define generally accepted restrictions, the scope of behavior within which states determine the rights and obligations of subjects of national law. The above agreements are usually legalized in order to achieve a certain settlement of relations within the country (for example, in the field of ensuring and observing human rights and freedoms).

As we know, the two main theories, these are: the theory of implementation and the theory of transformation, have a similar basis, this basis is the postulate of the independence and independence of the systems of international and domestic law from each other. This case is extraordinary, since the process of contacts between these normative formations described above is defined differently. One of the main ones, that is, the theory of implementation, characterizes it as a set of law-making and organizational and executive measures designed to implement the provisions of international legal norms in practice and different depending on the subject and final goal of international legal regulation, and not as a combination of several means of legal techniques, the purpose of which is to transfer the norms of international law into the norms of national law.

Of course, the peculiarity of the right to the results of intellectual activity is manifested in their territorial nature. According to Art. 7 of the Civil Code of the Republic of Uzbekistan, if an international treaty or agreement establishes completely different rules than those provided for by civil law, the rules of the international treaty or agreement are applied).

The way of adopting an internal act is the most common way of implementing the norms of international treaties on the protection of intellectual property, chosen by the legislative power of the Republic of Uzbekistan. The procedure for the transformation, that is, for the transfer, of the obligations assumed by Uzbekistan mainly takes place through the institution of implementation. Studying the legislative practice of Uzbekistan, we came to the conclusion that there are no norms in it obliging to implement the provisions of ratified international treaties, with the exception of those rules that recognize the priority of international treaties.

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