

# The Mechanism of the Interrelation of International and Domestic Law

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**Abstract:** *The Russian Federation is a member of international relations, a permanent member of the UN Security Council; it is one of the member states of the Council of Europe, the Organization for Security and Cooperation in Europe; since 2012 it is a member state of the World Trade Organization. The participation of the Russian Federation in international cooperation is based on the recognition of universally recognized principles and norms of international law. The Constitution of the Russian Federation, as a regulatory legal act of the highest legal force in the country, enshrines a number of provisions aimed at the practical implementation in the daily life of Russian society of generally accepted principles and norms of international law. Among these provisions is an imperative constitutional norm that enshrines the fact that the universally recognized principles and norms of international law and international treaties of the Russian Federation are part of its legal system and if an international treaty of the Russian Federation establishes other rules than those provided by law, then the rules of the international treaty apply (Part 4 of Article 15 of the Constitution of the Russian Federation). The article establishes that in practical implementation in the national legal system of generally recognized norms and principles of international law, conflicts arise due to the need to ensure a balance between the national interests of the state and the fulfillment of obligations stipulated by international treaties of which the Russian Federation is a party.*

**Index Terms:** *dualistic concept, interpretation, legal positions of judicial bodies, monistic concept, national legislation, sovereignty, universally recognized norms and principles of international law.*

## I. INTRODUCTION

The preamble of the Constitution of the Russian Federation reflects the awareness of the multinational people of Russia as part of the world community and this awareness implies that for the people of our country, as a carrier of sovereignty and the sole source of power, the universally recognized fundamental principles and norms of international law, reflected in the norms of the Constitution of the Russian

Federation adopted by the whole nation, are of utmost importance. Following the values recognized by the international community, the most important of which is to adopt as the basic principle recognizing the individual, his or her inalienable rights and freedoms as a highest value, the Russian Federation established in its fundamental law that, universally recognized principles and norms of international law and international treaties of the Russian Federation are part of its legal system (part 4 of article 15 of the Constitution of the Russian Federation), and also secured the right of everyone to seek protection of their rights in interstate agencies for the protection of human rights and freedoms, in case of exhaustion of domestic remedies (part 3 of article 46 of the Constitution of the Russian Federation). Currently, in the process of implementation in specific legal relations, there is a discrepancy in interpretations of the contents of a number of values and principles proposed by some countries as generally accepted, but rejected by other states due to their contradiction with the traditionally established in these countries ideas about the content of such human values as morality, virtue, duty, honor, dignity, freedom, etc. By virtue of these contradictions, when they are viewed through the prism of the moral [1] and ethical foundations of society traditional for Russia, the sociocultural information and life defining phenomena generated by the community of Western countries often appear unnatural, artificially created and false. Since these phenomena and concepts, allegedly enshrined in the norms of international law, but in reality representing only interpretations of these norms, are offered to our country as a model of "correct" behavior, the need to resolve the issue of the relationship between international law and national legislation in the Russian system becomes especially pressing. In this regard, resolving the issue of the relationship between international and domestic law in the Russian legal system becomes theoretically and practically significant, since the theoretical justification of the extent of the applicability of international law in national law and law enforcement practice substantiates the content and directions of development of current legislation, the effectiveness of which determines the effectiveness of inalienable rights and human freedoms in the Russian Federation. The issue of the relationship between the norms of international and domestic law has been the focus of attention of thinkers for quite a long time. The German philosopher Adolf Lasson [2] and his compatriot Albert Zorn [3] and others, whose works are founded on the writings of Georg Wilhelm Friedrich Hegel [4], expressed their point of view on this issue long ago.

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# The mechanism of the interrelation of international and domestic law

At about the same time, Heinrich Triepel [5] presented his view on this problem which was later developed in the writings of the Italian jurist and judge Dionisio Anzilotti [6]. The works of the Austrian and American jurist and philosopher Hans Kelsen [7] are of equal importance. In the context of contemporary problems of the relationship between the norms of international and domestic law in the Russian legal system, the authors took into account the opinion expressed by such scholars as Yu.I. Skuratov [8], M.S. Lavrentieva and M.M. Turkin [9], I.Yu. Nikodimov and G.D. Golovko [10], Al Ali Nasser [11], V.A. Malcev et al. [12], Shilovskaya et al. [13]. However, the main conclusions were made on the basis of an analysis of the judgements of international and national judicial bodies, taking into account the opinions of these scholars.

## II. PROPOSED METHODOLOGY

In the process of research, the authors applied general scientific methods (logical method, systemic and structural method, analysis) and private scientific methods of cognition (retrospective, formal legal, comparative legal) to achieve the following goals:

1. Since the issue of the relationship between international and domestic law was thoroughly discussed a long time ago in the theory of law, the authors analyzed the content of dualistic and monistic concepts of the relationship between supranational and national legislation in their relationship with the conditions and factors of functioning of various states and interstate interaction existing at the time of substantiation of these concepts. Then, the results of the analysis conducted were compared with the current conditions and factors of the activities of the Russian Federation in the international arena, as well as with the substantive aspects of its participation in international cooperation in ensuring the generally recognized rights and freedoms of individual and citizen.
2. Analysis of the content of legal positions of national and supranational judicial bodies, as well as their interpretation of the content of fundamental rights and freedoms of individual and citizen as basic fundamental values, taking into account the results of the analysis of the main provisions of different concepts of the relationship between international and domestic law, as well as taking into account the results of a meaningful analysis of modern conditions and factors of international cooperation of Russia allowed the authors to work out and substantiate approaches in choosing the concept of the ratio of the norms of international and domestic law in the national legal system.

### A. Algorithm

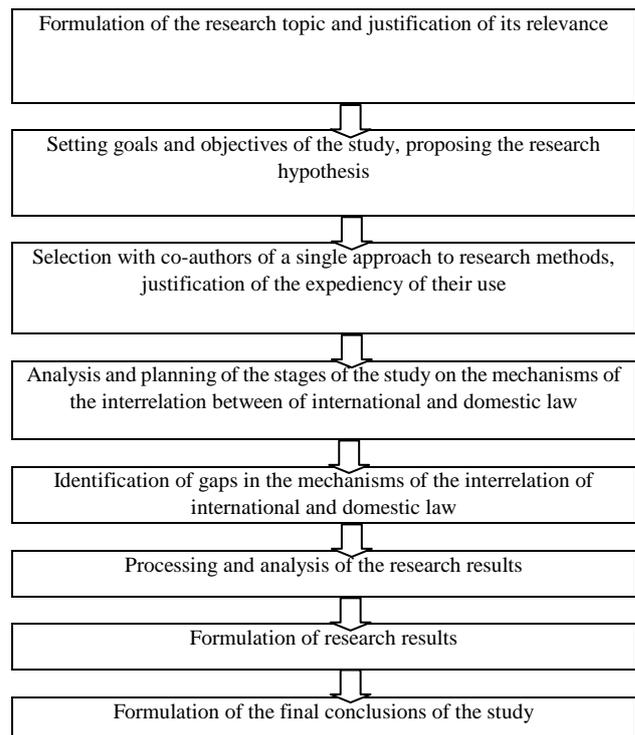
The study of the interrelation between international and domestic law in the Russian legal system was based on a branching algorithm.

In the course of the study, the authors analyzed the interrelation of supranational and national legislation. The processing of the existing regulatory frameworks in Russia and abroad showed the imperfection of the norms of national legislation.

In order to develop and substantiate approaches to choosing the concept of the interrelation of the norms of international

and domestic law in the national legal system, selection mechanisms were proposed.

### B. Flow Chart



## III. RESULTS

1. We believe that when considering issues of the relationship between the norms of international and national law, it is necessary to adhere to the main provisions of the concept of moderate monism, the main postulate of which is that the norms of national legislation should be applied in the domestic sphere, which should be based on the relevant provisions of generally accepted acts of international law, given the absence of their contradictions with the norms of constitutional law, enshrining the foundations of the constitutional system of the Russian Federation, including its state sovereignty.
2. The postulate of applying the norms of national legislation based on the relevant provisions of universally recognized acts of international law should be used as a base both when conducting theoretical studies of Russian law and when the Russian Federation ratifies acts of international law and their implementation into the national legal system.
3. The application of the concept of moderate monism in the relationship of international and domestic law in the rule-making and law-enforcement practice of the Russian legal system will most fully ensure the protection of universally recognized human rights and freedoms while maintaining the necessary level of state sovereignty of the Russian Federation that meets our national security requirements.

#### IV. DISCUSSION

Constitutional norms enshrining the place and role of sources of international law in the Russian legal system are expressed in a number of legislative acts and confirmed by a large number of decisions of judicial bodies, including the Constitutional Court of the Russian Federation, which plays a special role in protecting the rights and freedoms of the individual and citizen guaranteed by the Constitution. For example, the Russian Federation ratified by its law [14] the European Convention on the Protection of Human Rights and Fundamental Freedoms and its Protocols signed on 28 February 1996 [15]. After that, the Supreme Court of the Russian Federation consulted the provisions of this act of international law resolving cases within its competence [16]. In addition, Russia recognizes the need to enforce the judgments of the European Court of Human Rights operating under the Convention, and this is confirmed by many judgments of the Constitutional Court of the Russian Federation, which, in the framework of the constitutional control, considers cases on citizens' complaints regarding violation of constitutional rights and freedoms by law applied by national courts on specific cases [17], [18]. The sensitivity of the Russian legal system to the influence of universally recognized norms and principles of international law characterizes the vectors of establishment of state and law in the Russian Federation [8]. A rather comprehensive analysis of the implementation by the Russian Federation of judgments of the European Court of Human Rights regarding the right to respect for private and family life is given by such authors as Malcev V.A., Starodumova S.Yu., Kurbanov A.S., Stepkin S.P. [12]. At the same time, the dynamically changing geopolitical situation in the world, the changes of which are accompanied by the aggravation of the international situation of our country, makes it possible to observe a discrepancy in the interpretations of the contents of a whole range of values and principles proposed by a number of countries as generally accepted, but rejected by other countries due to their contradiction to the understanding of such human values and principles as morality, virtue, duty, honor, dignity, freedom, etc. accepted in these countries. This remark applies equally to interpretations of the content of fundamental inalienable human rights and freedoms, as well as interpretations of the provisions of international treaties on the basis and within the framework of which the Russian Federation interacts with other states. The existence of such contradictions is indirectly confirmed by the use by Russian politicians and experts in the field of international relations in evaluating the activities of some international organizations and interaction with them in Russia of such expressions as "double standards", "violation of international law", "use of political means and methods for obtaining economic benefits", etc. For example, despite the globalization processes that are actively taking place in the world and the importance of ensuring unity in international affairs, the use of various international sanctions, often caused by the dissatisfaction of some countries with the sovereign independent position of other countries, is spreading [10]. Since the social and legal phenomena and concepts, allegedly enshrined in the norms of international law, but in reality representing only interpretations of these norms, are

presented to the Russian Federation as a model of "correct" behavior, the issue of the relationship between international law and national legislation in the Russian legal system acquires special significance. The legitimacy of such a question arises from the universally recognized right of nations to self-determination [11]. In the theory of law, the issue of the relationship between international and domestic law has been one of the major issues for quite a long time. Such a dominant position of the said problem in modern legal science is associated with globalization and the active integration of states in various fields, such as economic, informational, military, political, and many other fields. The need to resolve this issue arises not only at the level of contractual relations between the two states, but also at the level of interstate relations on a global scale, including in the framework of Russia's participation in the activities of international organizations. However, both in Russia and abroad, to date, there has not been a single approach to understanding the problems of the relationship between the two systems of justice. There are two approaches to understanding the problem of the relationship between international and national systems of justice: monistic - which considers both systems as a whole; and dualistic - considering international and national law as two different legal systems that are not governed by each other. The founder of the dualistic approach to understanding the positions of international and national law, the German scholar G. Triepel wrote: "International and domestic law are distinguished not only by branches of law, but also by systems of justice. They can be imagined as two circles that never intersect [5]. D. Anzilotti, a well-known supporter of dualism, came to the conclusion that international and domestic law "constitute separate legal systems" [6]. One should not assume that supporters of the dualistic approach did not see the correlation between the two legal systems, viewing their independence as absolute, as was considered in Soviet jurisprudence for many decades. K.-G. Triepel investigated such issues of interaction between national and international law as the assimilation of international law into national law, and national law into international law; referencing one right in the other; the application of international law in the domestic sphere and others. He came to the conclusion that in order for international law to carry out its tasks, it must constantly consult domestic law, otherwise, without such interaction, it is powerless [19]. It should be noted that it has been quite a long time since the time of the development of the main provisions of the dualistic concept of the relationship between international and national law in the legal system of a particular state, and since then the world order changed many times, therefore modern adherents of the dualistic concept are forced to modernize this concept, bringing its position to meet the realities of the modern world in the conditions of the need for close interstate cooperation in such important areas as economic cooperation, combatting international crime and terrorism, the humanitarian sphere and many others. If we consider the monistic concept, then both legal systems are considered as a whole.

It should be noted that within the framework of the monistic concept there are different approaches to the solution of the issue of prevalence of one system over the other: some scholars proceed from the prevalence of domestic law [3], the others from the prevalence of international law [7]. Also, there is moderate monism [20].

The theory of prevalence of intrastate (national) law was widely adopted in the late 19th and early 20th centuries in the works of German jurists, who considered international law as the sum of external relations systems of justice of different states - "external state law". A vivid representative of this theory - A. Zorn wrote: "International law is legally law only when it is state law" [3]. A. Lasson, who took an even more nihilistic position with regard to international law, noted: "the state reserves the right to decide whether to observe international law or not, depending on whether it dictates its interests" [2].

This attitude to international law is based on the views of G. Hegel, who wrote: "Relations between states are relations between independent counterparties, which, however, stimulate each other, but remain above these stimulations" [4]. According to Hegel, the state is an "absolute power on earth", and therefore it has the right, at its discretion, to apply the norms of "external" law.

The most prominent representative of another monistic theory - the prevalence of international law is G. Kelsen. In the concept of G. Kelsen lies his understanding of the "pure theory of law." Contemporaries of G. Kelsen addressed the problems of sociology and psychology, ethics and political theory, while avoiding the knowledge of their own subject. However, G. Kelsen was convinced that legal science is not meant to deal with social prerequisites or moral foundations of legal establishment, but specifically legal (normative) content of law, which gives him grounds to say that "It is because of its anti-ideological nature that the pure theory of law is true science of law" [7].

G. Kelsen considered the state as a legal phenomenon, as a legal entity, a corporation. That is why G. Kelsen believes that the relationship between the international and the national legal systems "resembles the correlation of the national legal system and the internal norms of a corporation" [7].

However, as is known, the state distinguishes it from other organizations, including sovereignty, so the question of the relationship between international and national law cannot be resolved separately from the issue of state sovereignty. And it is this state and legal category - "state sovereignty" that serves as central in disputes between Russian lawyers about the relationship between international and national law in the Russian legal system. In addition, the determination of the necessary correlation between the norms of international and domestic law allows avoiding discrimination in exercising of the rights of citizens - representatives of various social groups [9].

To evaluate the above, in our opinion, it is also necessary to take into account the difference between the concepts "legal system" and "system of law", since the concept "legal system" is broader and, besides the elements of the system of law itself, includes the whole complex of legal phenomena existing in society (system of sources of law, law-making, law-enforcement practice, legal culture, legal ideology, etc.).

In this regard, it is worth mentioning the legal position of the ECHR, expressed in a number of judgments of this intergovernmental body, which is that the specific means of enforcing its judgments within the national legal system are elected by the respondent state itself. The only mandatory condition is the requirement of compatibility of these means to the conclusions contained in the relevant judgment of the ECHR. At the same time, in the opinion of the ECHR, national authorities should resolve issues of interpretation and application of national legislation. Such conclusions on the methods of execution of judgments of the ECHR are reflected in a number of resolutions of this intergovernmental body [21]-[24] recognized by the Russian Federation ipso facto.

This necessitates the recourse to the practice of resolving disputes on the applicability of international or national law in resolving specific cases by the judicial authorities and, above all, by the Constitutional Court of the Russian Federation, which unequivocally expressed its legal position in its Resolution of 14 July 2015 # 21-P.

In this and a number of other judgments of the Constitutional Court of the Russian Federation, among other things, it is stated that, firstly, participation of the Russian Federation in ratified international treaties and, accordingly, acceptance of certain obligations, does not mean its refusal from state sovereignty, which is an essential qualitative feature of the Russian Federation, characterizing its constitutional status [25], [26], and, secondly, if the ECHR, interpreting any provision of the Convention for the Protection of Human Rights and Fundamental Freedoms in its consideration of the case, gives the concept used in it other than its accepted meaning, or interpretation, contrary to the object and purpose of the Convention, the state in respect of which the ruling on the case was made is entitled to refuse to fulfill it, as beyond the obligations voluntarily undertaken by that state upon ratification of the Convention [26].

The Constitutional Court of the Russian Federation in this judgment especially emphasizes that in such cases it is not about the validity or invalidity of the international treaty for Russia in general, but only about the impossibility of complying with the obligation to apply its norm in the interpretation given to it by an authorized interstate body within the framework of consideration of a specific case.

## V. CONCLUSION

Thus, these circumstances lead to the conclusion that modern approach to the issue of the applicability of supranational law in the domestic legislation of the Russian Federation is to fully implement the international agreements adopted when signing and ratifying, but this does not mean that the state completely abandons its sovereignty. The Constitution of the Russian Federation, on the one hand, recognizes the primacy of international law over domestic law, and on the other hand, is a regulatory legal act of higher legal force in Russia, which justifies the possibility of refusal in exceptional cases to comply with judgments of intergovernmental bodies in cases where such judgments contradict the Constitution of the Russian Federation

or endanger the foundations of the constitutional system of Russia.

Such approaches are most consistent with the basic provisions of the concept of "moderate monism" in the correlation of the norms of the international and domestic system, and these provisions should be followed in the further development of the theory of Russian law, as well as in the implementation of the norms of international law acts in the national legal system.

The application of the postulates of "moderate monism" in the legislative process and law enforcement practice in the Russian legal system fully meets both the requirements for ensuring national security and state sovereignty of the Russian Federation, and the requirements arising from the participation of the Russian Federation in various international treaties, including the requirements for fulfilling protection obligations in respect of universally recognized human rights and freedoms.

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