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THE CONCEPT AND ROLE OF ORGANISATIONAL AND LEGAL FRAMEWORK FOR ACTIVITIES OF IMPLEMENTERS OF INTERNATIONAL STANDARDS IN HUMAN RIGHTS PROTECTION

Abstract. ***Purpose.*** The purpose of the article is to define the concept and role of the organisational and legal framework for the activities of implementers of international standards in human rights protection. ***Results.*** The article, relying on the analysis of scientific views of scholars and provisions of current legislation, characterises the organisational and legal framework for the activities of implementers of international standards in the field of human rights protection. The author's original definition of this concept is proposed. The author emphasises the importance of the organisational and legal framework for the activities of implementers of international standards in the field of human rights protection. Judicial practice as a source of implementation and adoption of international human rights standards in Ukraine is under focus, because although judicial precedent is not recognised in our country as a source of law, it cannot be denied that it is the results of the work of courts that primarily determine the real level of implementation of these standards in the country, since only courts are authorised to administer justice in Ukraine, and, accordingly, a court decision is an important indicator of whether the goals pursued by the process of implementing international standards are achieved. ***Conclusions.*** Therefore, the organisational and legal framework for the implementation of international standards in the field of human rights protection is a set of principles and rules (provisions), stipulated in international and national legislation, according to which these standards are implemented (enshrined and applied) within the country. Organisational and legal frameworks facilitate the implementation of international human rights standards, due to: the necessary focus and consistency; implementation by competent entities – Ukrainian legislation clearly defines and delimits the powers of public authorities to recognise and formalise international standards, as well as to ensure the practical implementation of their requirements at the national level; implementation that meets national interests and the specifics of the organisation and functioning of law enforcement and human rights mechanisms and institutions; support by means of state influence, which is an important condition for guaranteeing the reality, rather than declarative nature, of the standards under study, although it should be noted here that this is possible only when the state itself is truly interested in implementing the relevant standards, and does not proclaim them only for the sake of declaring its intentions that have no practical value.

Key words: organisational and legal framework, activities, actor, implementation, international standards, human rights protection.

1. Introduction

The Law of Ukraine "On the National Program for the Adaptation of Ukrainian Legislation to the EU acquis" stipulates that the purpose of adapting Ukrainian legislation to the EU acquis is to achieve compliance of the Ukrainian legal system with the acquis communautaire, considering the criteria set by the European Union (EU) for states that intend to join it. The adaptation of Ukrainian legislation is a systematic process that includes several successive stages, each of which should achieve a certain degree of compliance of Ukrainian legislation with the EU acquis. The stages of the Program's implementation are determined allowing for the stages of legislative adaptation. The first stage of the Program is designed for the period until the end of the PCA. The periods of the next stages of its implementation will be determined depending on the results achieved at the pre-

vious stages, the economic, political and social situation in Ukraine, as well as the development of relations between Ukraine and the European Union. Adaptation of Ukrainian legislation to the EU acquis is a priority component of the process of Ukraine's integration into the European Union, which, in turn, is a priority area of Ukraine's foreign policy (Law of Ukraine On the National Program of Adaptation of the Legislation to the EU acquis, 2004).

Some problematic issues related to the implementation of international standards in the field of human rights protection have been considered in scientific works by Yu. Bytiak, O. Bezpalova, I. Holosnichenko, V. Zhyvytskyi, A. Komziuk, O. Mykolenko, O. Solomatina, Kh. Yarmaki and many others. However, despite a considerable number of scientific achievements, scholars have not virtually focused on the issue of the organisational and legal framework for the activities of implementers of international standards in the field of human rights protection.

The purpose of the article is to define the concept and role of the organisational and legal framework for the activities of implementers of international standards in the field of human rights protection.

2. Implementation of international standards in human rights protection

With regards to the introduction of international standards in the state, in particular, in the field of human rights protection, researchers usually focus on its implementation in Ukrainian legislation. The latter can be understood in two aspects, namely: 1) systemic, according to which it is a set of relevant organisational, legal and other means, forms and methods (ways, techniques) through which international human rights standards are implemented at the domestic level; 2) functional, which characterises implementation as targeted activities (work) of competent entities to ensure proper implementation of the standards under study at the domestic level.

The current legislation does not clearly define the conceptual and terminological construct of "organisational and legal principles" or "legal principles", although these terms are often used in the text of various laws, in particular in their titles, for example, the Laws of Ukraine "On organisational and legal principles of combating organised crime", "On basic principles of state supervision (control) in the field of economic activity", "On principles of state regulatory policy in the field of economic activity", etc. In the dictionary, scientific and educational literature, the term "principle" is interpreted as the basis of something, the main thing on which something is grounded; the initial, main position; the basis of the worldview, a rule of behaviour; a way, a method of doing something (Busel, 2005, p. 419). V.V. Nazarov notes that the principles should be understood as the basic starting points of any scientific system, theory of an ideological trend, etc. Considering the principles of criminal proceedings, he interprets them as the main, initial points on which, in turn, more detailed provisions are based. These are the initial regulatory and guiding principles expressed in criminal procedure law, which characterise its content and the laws of social life enshrined in it, and which have been enshrined in the Constitution of Ukraine, the Code of Criminal Procedure and other regulations (Nazarov, Omelianenko, 2008, p. 31).

Therefore, it is worth considering the key sources of the organisational and legal framework for the implementation of international standards in the field of human rights protection, among which the Constitution of Ukraine should be highlighted. With regard to the direct implementation of international human rights standards, the Constitution clearly stipulates that: international treaties in force, ratified by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine; everyone has the right, after exhausting all national legal remedies, to apply for the protection of his or her rights and freedoms to the relevant international judicial institutions or to the relevant bodies of international organisations of which Ukraine is a member or participant (The Constitution of Ukraine, 1996). In other words, in its Basic Law, Ukraine recognises that internationally adopted rules and provisions are important and binding for it as an active participant in international cooperation. Moreover, Article 9, part 2, and Article 18 stipulate that Ukraine is guided primarily by its national interests, and the implementation of standards that do not meet them and are not consistent with the provisions of the Constitution can only take place after the latter has been amended accordingly. In addition, the importance of the Constitution lies in the fact that it defines the powers of the President of Ukraine and other state authorities in terms of international cooperation.

The next group of organisational and legal frameworks for the implementation of international human rights standards is made up of international legal acts, which are second only to the Constitution of Ukraine in terms of their legal force, provided that such an act has been duly ratified in our country. The significance of these documents is primarily due to the fact that they stipulate the scope and content of the obligations assumed by the state by agreeing to or acceding to the relevant international act, which shall be

fulfilled properly, in particular by facilitating an appropriate organisational and legal environment and mechanisms at the national level. In addition, it should be noted that international treaties define general rules and requirements for the application of their provisions. In particular, the Vienna Convention on the Law of Treaties of 1986 (Resolution of the Council of Ministers of the USSR On the Approval of the Vienna Convention on the Law of Treaties, 1986) should be underlined, because it defines the requirements for the conclusion and implementation of international treaties in order to ensure an appropriate level of fairness and respect for the obligations arising from treaties by participants in international cooperation.

3. The role of Ukrainian legislation as the organisational and legal framework for implementing international standards in human rights protection

Next, the laws of Ukraine play an important role in determining the organisational and legal framework for the implementation of international standards in the field of human rights protection. A law is the main type of act issued by the highest authorities. Laws differ from other acts of state power due to their regulatory nature, while bylaws can be both regulatory and non-regulatory (Pashkov, Smirnov, 1982, p. 98). Therefore, laws are one of the main sources in the Ukrainian legal system, and their provisions are intended to develop and ensure the relevant constitutional provisions. They regulate the most important social relations and determine public policy in a particular area of public life, express the state's vision of how the relevant area (sphere) of social relations should function and develop in order to ensure the proclaimed social values and facilitate the proper fulfilment of the state's obligations to its population. As the source of the organisational and legal framework under study, the laws define the substantive and procedural requirements for the participation of Ukraine, represented by its competent authorities and officials, in international cooperation, the range and scope of powers of these entities, the procedure for approval and implementation of relevant international standards, and liability for their violation or improper implementation.

The key legislative sources in this context include such laws as the Law of Ukraine "On International Treaties of Ukraine", which establishes the procedure for concluding, implementing and terminating international treaties of Ukraine in order to properly ensure national interests, implement the goals, objectives and principles of Ukraine's foreign policy enshrined in the Constitution of Ukraine and the legislation of Ukraine (Law of Ukraine On International Treaties of Ukraine, 2004), "On the National Program of Adaptation of Ukrainian Legislation to the EU acquis," which stipulates that the adaptation of Ukrainian legislation to the EU acquis is a priority component of the process of Ukraine's integration into the European Union, which in turn is a priority direction of Ukraine's foreign policy; this is National Program for the Adaptation of Ukrainian Legislation to the EU acquis that defines the mechanism for Ukraine to achieve compliance with the third Copenhagen and Madrid criteria for EU membership. This mechanism includes the adaptation of legislation, the establishment of relevant institutions and other additional measures necessary for effective law making and law application. According to this law, public policy of Ukraine on the adaptation of legislation is formed as an integral part of the legal reform in Ukraine and is aimed at ensuring unified approaches to rulemaking, mandatory consideration of the requirements of the European Union legislation during rulemaking, training of qualified specialists, facilitation of appropriate environment for institutional, scientific and educational, rulemaking, technical and financial support of the process of adaptation of Ukrainian legislation (Law of Ukraine On the National Program of Adaptation of the Legislation to the EU acquis, 2004); "On the Enforcement of Judgments and Application of the Case Law of the European Court of Human Rights, which regulates relations arising from the state's obligation to execute judgments of the European Court of Human Rights in cases against Ukraine, the need to eliminate the causes of Ukraine's violation of the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto, the introduction of European human rights standards into Ukrainian judicial and administrative practice, and the creation of preconditions for reducing the number of applications to the European Court of Human Rights (Law of Ukraine on Enforcement of Judgments and Application of the Case Law of the European Court of Human Rights, 2006).

In addition to special laws directly regulating the implementation and ensuring implementation of international human rights standards at the national level, a number of other laws of Ukraine, including codes, regulate these issues to varying degrees, and set forth these standards in the form of relevant principles and provisions binding on all parties to law and legal relations covered by them.

In terms of legal force, the lower level of organisational and legal framework for the implementation of international standards in the field of human rights protection is bylaws.

A by-law is a document, issued by a competent authority or official on the basis of and in accordance with the law to specify and implement legislative requirements, containing rules of law. The subordinate nature of these regulations does not mean that they are less legally binding. They have the necessary legal force, but it does not have the universality and supremacy inherent in laws. The legal force of these acts depends on the status of state bodies, the nature and purpose of these regulations (Vediernikov, Papirna, 2008).

Organisational and legal frameworks of by-laws, despite their lower legal force compared to laws, are extremely important for ensuring the quality implementation of the standards under study, since it is at this level that conceptual provisions, as well as specific procedures and methodologies for assessing and incorporating (introducing, implementing) these standards into Ukrainian legislation and law enforcement practice are usually developed. For example, these are the Resolution of the Cabinet of Ministers of Ukraine "On the Concept of Adaptation of Ukrainian Legislation to the EU acquis", the Order of the Ministry of Economy and European Integration of Ukraine "On Approval of the Methodology for Determining the Criteria for the European Integration Component of State Target Programs," providing for that implementation is the realisation, fulfilment by the state of international legal provisions. In addition, it is important to note that a number of bylaws define the responsibilities of the relevant authorities, including ministries and other executive bodies, to implement the requirements of international standards in their activities.

Judicial practice as a source of implementation and adoption of international human rights standards in Ukraine should be under focus, because although judicial precedent is not recognised in our country as a source of law, undeniably it is the results of the work of courts that primarily determine the real level of implementation of these standards in the country, since only courts are authorised to administer justice in Ukraine, and, accordingly, a court decision is an important indicator of whether the goals pursued by the process of implementing international standards are achieved. It should be noted that Ukraine is traditionally among the five European countries with the most frequent complaints to the ECHR. The number of these applications is measured not in tens or hundreds, but in thousands. For example, at the end of 2018, this judicial institution had more than 7,200 complaints pending against Ukraine (Ukraine is in the top three in the number of complaints against it in the European Court of Human Rights, 2019). This is less than in previous years, but the figure is still impressive. Such a number of complaints is obviously evidence that the Ukrainian judicial system does not adequately protect human rights, freedoms and legitimate interests, and therefore, does not contribute to the real implementation of international standards in this field.

4. Conclusions

Therefore, the organisational and legal framework for the implementation of international standards in human rights protection is a set of principles and rules (provisions), stipulated in international and national legislation, according to which these standards are implemented (enshrined and applied) within the country. Organisational and legal frameworks facilitate the implementation of international human rights standards due to:

- First, the necessary focus and consistency; implementation by competent entities – Ukrainian legislation clearly defines and delimits the powers of public authorities to recognise and formalise international standards, as well as to ensure the practical implementation of their requirements at the national level;
- Second, implementation that meets national interests and the specifics of the organisation and functioning of law enforcement and human rights mechanisms and institutions;
- Third, support by means of state influence, which is an important condition for guaranteeing the reality, rather than declarative nature, of the standards under study, although it should be noted here that this is possible only when the state itself is truly interested in implementing the relevant standards, and does not proclaim them only for the sake of declaring its intentions that have no practical value.

To sum up, in order for international human rights standards to serve as real guarantees, rather than declarative statements, their implementation at the national level shall be ensured by relevant legal regulations and law enforcement practice, primarily by judicial authorities.

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ПОНЯТТЯ ТА РОЛЬ ОРГАНІЗАЦІЙНО-ПРАВОВИХ ЗАСАД ДІЯЛЬНОСТІ СУБ'ЄКТІВ ЗАПРОВАДЖЕННЯ МІЖНАРОДНИХ СТАНДАРТІВ У СФЕРІ ЗАБЕЗПЕЧЕННЯ ЗАХИСТУ ПРАВ ЛЮДИНИ

Анотація. ***Мета.*** Мета статті – визначити поняття та роль організаційно-правових засад діяльності суб'єктів запровадження міжнародних стандартів у сфері забезпечення захисту прав людини. ***Результати.*** У статті, спираючись на аналіз наукових поглядів учених та норм чинного законодавства, надано характеристику організаційно-правовим засадам діяльності суб'єктів запровадження міжнародних стандартів у сфері забезпечення захисту прав людини. Запропоновано авторське визначення цього поняття. Наголошено на важливості організаційно-правових засад діяльності суб'єктів запровадження міжнародних стандартів у сфері забезпечення захисту прав людини. Звернено увагу на судову практику як джерело запровадження та утвердження в Україні міжнародних стандартів захисту прав людини, адже хоча судовий прецедент і не визнається в нашій державі джерелом права, але не можна заперечити, що саме за результатами роботи судів насамперед можна судити про реальний рівень реалізації зазначених стандартів у країні, бо лише суди уповноважені в Україні здійснювати правосуддя, і, відповідно, судове рішення є важливим показником того, чи досягають ті цілі, які переслідує процес впровадження міжнародних стандартів захисту прав людини. ***Висновки.*** Організаційно-правові засади запровадження міжнародних стандартів у сфері забезпечення захисту прав людини являють собою сукупність передбачених у міжнародному та національному законодавстві принципів і правил (норм), згідно з якими відбувається реалізація (закріплення і застосування) зазначених стандартів усередині країни. Завдяки організаційно-правовим засадам процес запровадження міжнародних стандартів захисту прав людини: отримує необхідну цілеспрямованість та послідовність; по-друге, здійснюється компетентними суб'єктами – законодавство України чітко визначає та розмежовує повноваження органів публічної влади щодо

визнання та оформлення міжнародних стандартів, а також забезпечення практичної реалізації їх вимог на національному рівні; здійснюється з урахуванням національних інтересів, а також особливостей організації і функціонування правоохоронних і правозахисних механізмів та інститутів; забезпечується засобами державного впливу, що є важливою умовою гарантування реальності, а не декларативності досліджуваних стандартів, хоча тут слід зауважити, що це можливо лише тоді, коли сама держава по-справжньому зацікавлена у впровадженні відповідних стандартів, а не проголошує їх лише заради декларування своїх намірів, які не мають реальної практичної цінності.

Ключові слова: організаційно-правові засади, діяльність, суб'єкт, запровадження, міжнародні стандарти, захист прав людини.

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