ПРАВО. ПОЛИТОЛОГИЯ

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РЕАЛИЗАЦИЯ ПРАВ ЧЕЛОВЕКА В МЕЖДУНАРОДНЫХ ДОГОВОРАХ КЫРГЫЗСКОЙ РЕСПУБЛИКИ: ПРОБЛЕМЫ И РЕШЕНИЯ

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IMPLEMENTATION OF THE HUMAN RIGHTS INTERNATIONAL TREATIES IN THE KYRGYZ REPUBLIC: PROBLEMS AND SOLUTIONS

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This article concentrates on the issues of implementation mechanism of the norms of international treaties to which the Kyrgyz Republic is a party by indicating ways of possible solutions of the problems in treaty implementation and fulfilling processes. Since the Kyrgyz Republic is the former State of the Union of Soviet Socialist Republics, one of the methodologies used to write this paper was a comparative analysis of the laws of the Kyrgyz Republic concerning the issues of international treaties with the laws of other Commonwealth of Independent States.

В данной статье рассматривается механизм имплементации норм международных договоров, в которых участвует Кыргызская Республика путем определения возможных способов внедрения их в правовую систему государства, в национальное право нашей страны. Помимо этого проведен сравнительный анализ конституционного законодательства государств-членов СНГ, поскольку Кыргызская Республика была составной частью Советского Союза и имеет схожую правовую систему.

The Vienna Convention of the Law of International Treaties, 1969 contains a basic principle of international law known as "Pacta sunt servanda", which states that "every treaty in force is binding upon the parties to it and must be performed by them in good faith." However, this principle alone is not enough for a state to successfully apply the norms of international treaties in its territory. According to the Russian scientist and specialist in International and European Law, P.N. Biryukov, international legal norms are applicable only when they are implemented. The term "implementation" means that the participants of their international legal relations fulfill obligations established in international legal norms.¹

O. Tiunov considered the implementation of international treaties in both narrow and wide sense. According to him, in a narrow sense, implementation is associated with the obligations of States to take domestic measures for the establishment and implementation of legal instruments of international law. In a broad sense implementation - is not only work to improve the laws of the State, the creation of any new regulations, but also measures of organizational-administrative nature a state must take.²

The Tiunov's point of view is shared by another scholar in international law, A.S. Gaverdovsky, who state that implementation is organizational and legal activities taken by states individually, collectively or with the help of international organizations (see below the example of the ICRC in Kyrgyzstan) in order to fulfill its international obligations.³ With this regard, it should be noted that a number of necessary elements for implementation should involve the following:

- Establishment of national legal means to ensure the fulfillment of the international obligations at the domestic level;
- A system of state bodies responsible for the implementation of international obligations;
 - National law enforcement practices.

According to the above mentioned elements, we can consider implementation as a factual fulfillment of international obligations. Therefore, it should be noted that implementation has very broad meaning; it can include such measures as creating legal preconditions (adopting the laws) for the execution of the norms of international treaties, ensuring the enforcement of the norms of treaties, and creation of special commissions for the realizations of international agreements. In other words, implementation covers both de jure and de facto fulfillments of the state's international obligations. Consequently, a state must fulfill its international obligations not only by the means of implementation of the norms of international treaties into its national law, but also by means of enforcing those implemented norms, which will lead to factual results.

In should be pointed out that various state bodies are involved in the implementation of international obligations of the state. Thus, the range of public authorities, which are subject to the fulfillment of international obligations of a state, is quire extensive. In fact, all three branches of power are involved in this procedure. It is due to the fact that each

² Tiunov O.I. Interpretaciya norm evropeiskogo gumanitarnogo prava v rossiskoi pravovoi sisteme.//Rossiskaya b evropeiskay pravo-

¹ P.N. Birukov, Mejdunarodnoe pravo, M., 1998, p.19.

zashitnye sistemy: sootnoshenie i problemy garmonizaciii: sb. st./pod red. V.M. Baranova. Nizhnii Novgorod, 2003, c. 172..

³A.S.Gaverdosky. Implementaciya norm mejdunarodnogo prava. Kiev, 1980. P.62

of the organs of state power has its own competence on the scope of which it executes certain functions.

Therefore, the role of the parliament of the Kyrgyz Republic should be emphasized, because as a legislative branch, it provides the legal basis for the implementation of norms of international treaties in the Kyrgyz Republic.

It should be noted that the government of the Kyrgyz Republic shares the largest responsibility in the implementation of the norms of international treaties. In accordance with article 29 of the law "On International Treaties of the Kyrgyz Republic",1999 "The Government of the Kyrgyz Republic develops the measures to implement international treaties and determines the ministries, state committees, administrative departments and official, which are responsible for the fulfillment of the obligations under international treaties of the Kyrgyz Republic."4Thus, the Government of the Kyrgyz Republic is empowered with the necessary functions, which are necessary to fulfill the obligations of a state. However, the executions of these functions can be problematic due to the fact that the Kyrgyz Republic is a party to a huge amount of international treaties.

Additional measure that the Government can take to ensure the effectiveness of implementation of the norms of a certain international treaty is a creation of special commissions. For instance, the Interagency Commission on the Implementation of International Humanitarian Law was created by the government decree on June 18, 2003. The main functions of this Commission are:

- assistance in harmonization of the legislation of the Kyrgyz Republic in accordance with the conventions and agreements on International Humanitarian Law, to which the Kyrgyz Republic is a party;
- review and assessment of the legislation of the Kyrgyz Republic in terms of its compliance with International Humanitarian Law;
- preparation of proposal for the implementation of IHL in the Kyrgyz Republic;
- review and preparation of advisory opinions on draft treaties, legislative acts of the Kyrgyz Republic in the field of IHL;
- coordination of the government activities aimed at the implementation of IHL in the Kyrgyz Republic;
- the promotion of IHL and collection of the information of IHL;
- monitoring the implementation of decisions adopted the Commission;
- organization of interaction, exchange of information with the International Committee of the Red Cross.⁵

In accordance with its functions, the Commission makes plan of measures for the implementation of international humanitarian law.

Currently, the members of the Interdepartmental Commission on the implementation of International Humanitarian Law are the followings: the representatives of the Ministry of Internal Affairs, Ministry of Defense, State Committee on National Security of the Kyrgyz Republic, Ministry of Foreign Affairs of the Kyrgyz Republic, the Ministry of Health of the Kyrgyz Republic, Ministry of Education and Science of the Kyrgyz Republic, Border Patrol of the Kyrgyz Republic, the National Red Crescent Society of the Kyrgyz Republic Republic.

In addition, the important role of International Organizations, which assist to implement the norms of international treaties in the Kyrgyz Republic, should be pointed out. The International Committee of the Red Cross is a good example of such organizations. Article 3(2) of the 1986 Statutes of the International Red Cross and Red Crescent Movement, dealing with tasks of the National Red Cross and Red Crossent Societies, provides that the National Societies "disseminate and assist their governments in disseminating international humanitarian law; they take initiatives in this respect".

Moreover, the Head of the Dissemination Service of International Committee of the Red Cross, Jean-Jacques Surbeck in his work "Dissemination of International Humanitarian Law" described in details the role of ICRC in dissemination of IHL. According to him, the ICRC is, both legally and in fact, the chief coordinator of dissemination activities within and without the Red Cross world. It initiates, develops, encourages, and oversees the dissemination of international humanitarian law and of Red Cross principles to the armed forces, the NRCS, government ministries, universities, schools, medical professionals, journalists and the media, and the public at large in all 154 countries bound by the Geneva Conventions. It would be unreasonable to think, however, that the ICRC can accomplish all this on its own. Its role has more to do with advising, inspiring, "teaching the teachers" creating material in some cases and reviewing it in others, exchanging information, and, to the best extent possible, coordinating the whole network of dissemination activities throughout the world.8

It should be noted that his words are confirmed by the descriptive information provided in the official website of the ICRC – $\underline{www.icrc.org}$, which states that the ICRC provides the government with advice on implementing IHL and integrating it into academic curricula. The organization also supports the permanent integration of IHL, as well as of other international standards applicable to situations of

⁴ Article 29 of the Law "On International Treaties of the Kyrgyz Republic", 1999.

⁵ Regulation on the Interagency Commission on the implementation of International Humanitarian Law adopted by the government decree on June 18, 2003.

⁶http://www.mfa.kg/articles/implementaciya-norm-mejdunarodnogo-gumanitarnogo-prava-v-kirgizskoi-respublike_en.html.

⁷ Statute of the International Red Cross and Red Crescent Movement, adopted by the 25th International Conference of the Red Cross, Geneva, 23-31 October 1986, Article 3(2).

⁸ Jean-Jacques Surbeck "Dissemination of International Humanitarian Law", Washington College of Law, American University, 1983.

violence, into the practices of the armed forces and lawenforcement services.9

The ICRC has cooperation agreements on the integration of IHL into secondary education aimed at ensuring the sustainability of IHL teaching in schools.¹⁰

Another additional tool in implementing the norms of international treaty is dissemination of information of international treaties. It is done for such reasons as education, so that people know their rights guaranteed by international treaties, and also know how to react in certain situations. In fact, let us consider the role of the ICRC in dealing with implementation of the Geneva Conventions in terms of dissemination. Jacques Surbeck states that the ICRC drew up a list of eight primary audiences in order to determine, as precisely as possible, the categories of people who would be in a position to apply some provisions of the Geneva Conventions in case of armed conflict, and who, consequently, should receive some instruction in the content of the Geneva Conventions. In order of importance, these "target groups" are: ..., primary and school systems, medical professionals, secondary journalists and the media, and the public at large.11

One of the audiences from the list of the ICRC consists of primary and secondary school systems. The goal in this area is to impress as soon as possible on the minds of children the fundamental principles of humanitarian law, and especially the notion of the immunity of the Red Cross and Red Crescent symbols. 12 As it was previously mentioned, it is one of the reasons why dissemination is necessary - education of younger generations. In many contemporary conflicts, children are involved either in the logistics or directly in the fighting. Moreover, many children of today will be soldiers tomorrow. This audience also is of prime importance to each National Society because school children represent a substantial reservoir of potential recruits for each Society's activities and because a larger percentage of the population can be reached by dissemination among children.13

Another audience that is included in this group is Medical professionals. The Geneva Conventions, and the additional Protocols to a greater extent, state explicitly the rights and duties of doctors and nurses in time of war. The protection and immunity granted to medical personnel, unfortunately, is not always known, even by the medical professionals themselves. This lack of knowledge can create a dangerous situation during an armed conflict.¹⁴

Finally, the ICRC included the public at large as final audience for a number of reasons. One important reason is that a better knowledge ofthe

Conventions among the general population might help reduce the horrors that occur every time civilians participate in an armed conflict, especially an internal one. The public knows nothing about the humanitarian rules that apply in armed conflicts. As a result, they often violate the rules. When these uncontrolled and unprepared combatants enteran armed conflict, there is almost inevitably a sharp increase in summary executions, torture, and disregard for the protection granted by the Red Cross emblem. These actions inevitably trigger the unending process of retaliation and reprisal, and mark a return to complete barbarity. 15

On the basis of everything mentioned above, it is important to mention that a lot of conventions contain the norms concerning dissemination of information on a convention. For example, Article 26 of the 1906 Geneva Convention provides: "The signatory governments shall take the necessary steps ... to make the provisions of this convention known to the people at large."16

Article 27 of the 1929 Geneva Convention provides: "The High Contracting Parties shall take the necessary steps ... to bring [the provisions of the present Convention] to the notice of the civil population."17

Article 47 of the Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949 states the following:

The High Contracting Parties undertake, in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population, in particular to the armed fighting forces, the medical personnel and the chaplains. 18

Additionally, Article 83 of Additional Protocol I and article 19 of Additional Protocol II to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 also contain the dissemination

Article 25 of the 1954 Hague Convention for the Protection of Cultural Property states: The High Contracting Parties undertake, in time of peace as in time of armed conflict, to disseminate the text of the present Convention and the Regulations for its execution as widely as possible in their respective countries. They undertake, in particular, to include the study thereof [if possible] in their

⁹ http://www.icrc.org/eng/where-we-work/europe-central-asia/ kyrgyzstan/overview-kyrgyzstan.htm.

Ibid

¹¹ Jean-Jacques Surbeck "Dissemination of International Humanitarian Law", Washington College of Law, American University, p.128, 1983.

¹² Jean-Jacques Surbeck "Dissemination of International Humanitarian Law", Washington College of Law, American University, p.131-132, 1983

¹³ Ibid

¹⁴ Ibid

¹⁵ Jean-Jacques Surbeck "Dissemination of International Humanitarian Law", Washington College of Law, American University, p.132,

¹⁶ Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field, Geneva, 6 July 1906, Article 26.

¹⁷ Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field, Geneva,27 July 1929, Article 27

¹⁸ Article 47 of the Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949

programmes of \dots civilian training, so that its principles are made known to the whole population. ¹⁹

Article 42 of the Convention on the Rights of the Child, 1989 contains the following provision: "States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike."²⁰

It should be noted that to ensure the implementation of this convention, it was established the Committee on the Rights of the Child, which consistently urges governments to take special measures and develop special policies and programs for children.²¹ For example, in its reviews, the Committee recommends using the Convention as a guide in policy-making and implementation, to:

Raise awareness and disseminate information on the Convention by providing training to all those involved in government policy-making and working with or for children. One of the many innovations of the Convention on the Rights of the Child is the way in which it obliges States "by appropriate and active means" to inform adults and children of child rights. The Committee on the Rights of the Child suggests that States disseminate information on children's rights in the following ways:

- By adopting a comprehensive strategy to reach all sectors of society;
- By continuous, rather than one-off or ad hoc, dissemination of information;
- In ways that are accessible to and understandable by, children;
- In appropriate languages and forms to reach the entire population, including all minority and indigenous groups;
- By integrating information on child rights into school and training curricula so that it underpins the
 - ethos and organization of education;
 - By enlisting the full support of the media.²²

Another example is International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990, which indicates the following:

- 1. Migrant workers and members of their families shall have the right to be informed by the State of origin, the State of employment or the State of transit as the case may be concerning:
 - (a) Their rights arising out of the present Convention;
- (b) The conditions of their admission, their rights and obligations under the law and practice of the State concerned and such other matters as will enable them to comply with administrative or other formalities in that State.
- 2. States Parties shall take all measures they deem appropriate to disseminate the said information or to ensure

that it is provided by employers, trade unions or other appropriate bodies or institutions. As appropriate, they shall co-operate with other States concerned.

3. Such adequate information shall be provided upon request to migrant workers and members of their families free of charge, and, as far as possible, in a language they are able to understand.²³

In addition, for the purpose of reviewing the application of the Convention, there shall be established a Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Committee shall consist, at the time of entry into force of the Convention, of ten and, after the entry into force of the Convention for the forty-first State Party, of fourteen experts of high moral standing, impartiality and recognized competence in the field covered by the Convention. (article 72 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990). For example, the Committee considered initial report of Bosnia and Herzegovina (CMW/C/BIH/1) at its 104th and 106th meetings (CMW/C/SR/104 and SR106), held on 23 April 2009 and 24 April 2009, and adopted at its 113th meeting, held on 29 April 2009, the following concluding observations.²⁴

The Committee notes the information provided by the delegation in relation to the training of border police on the Convention but notes the absence of detailed information thereon. The Committee is concerned that current efforts at training may be limited in their reach and that there is no information on measures to disseminate information and promote the Convention among other relevant stakeholders, in particular civil society organizations. ²⁵

Therefore, the Committee encourages the State party:

- (a) To strengthen and expand its training programmes to include all officials working in the area of migration, including social workers, judges and prosecutors and invites the State party to provide information in its second periodic report on any such training programmes;
- (b) To take the necessary steps to ensure access by migrant workers to information about their rights under the Convention;
- (c) To work with civil society organizations in order to disseminate information on and to promote the Convention. 26

There is also a specific Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters – Aarhus Convention for short, which came into force on 30 October 2001. The content of the Aarhus Convention is structured around three pillars:

- 1. Public access to information about the environment
- 2. Public participation in certain environmentally relevant decisions

²³ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990, Article 33.

¹⁹ Article 47 of the Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949

²⁰ The Convention on the Rights of the Child, 1989.

 $^{^{21}\ \}underline{\text{http://www.unicef.org/crc/files/Implementation_guidelines.}\ pdf}$

²² Ibid

²⁴ Concluding observations of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, 3 June 2009

²⁵ Ibid

²⁶ Ibid

3. Access to courts of law / tribunals in environmental matters.

The first pillar regulates access to information about the environment. According to this pillar, the general public should be entitled - without needing to prove a special interest - to access to information about the state of the environment, of public health and of other factors affecting the environment. This right exists vis-à-vis not only the administrative authorities, but also (in certain circumstances) private entities that exercise public responsibility in the field of conservation and would fall within the scope of the Aarhus Convention's very broad definition of an authority. Authorities should provide the information requested within one month; it is permissible to extend this deadline by a further month in the case of complicated applications. An application for information about the environment may be rejected only for certain specific reasons, e.g. if the application is obviously being misused or if the authority in question does not possess the information applied for. Other reasons for rejection: if releasing the information in question would have (say) negative effects on the confidentiality of the proceedings of public authorities, of commercial and industrial information or of personal data. The Convention also provides for more active dissemination of information about the environment among the general public. Here transparency is important, and care must be taken that the information can effectively be accessed. The Convention gives keeping publicly accessible lists or collections of data, and providing access to these free of charge, as examples of practical measures in this respect. The authorities should increasingly provide information about the environment via electronic databases.²⁷ In addition, this convention contains a specific provision on dissemination of information, in particular, part 1 of article 5 states the following:

- "1. Each Party shall ensure that:
- (a) Public authorities possess and update environmental information which is relevant to their functions;
- (b) Mandatory systems are established so that there is an adequate flow of information to public authorities about proposed and existing activities which may significantly affect the environment;
- (c) In the event of any imminent threat to human health or the environment, whether caused by human activities or due to natural causes, all information which could enable the public to take measures to prevent or mitigate harm arising from the threat and is held by a public authority is disseminated immediately and without delay to members of the public who may be affected." ²⁸

On the basis of everything mentioned above, I would like to point out that dissemination of information on international treaties is very expensive mean of implementation, and very seldom a state can fulfill its

obligations on this matter. Therefore, I think that in order to ensure that it can fully follow all the norms of international treaties to which it becomes a party, a state must find out first if it can afford this treaty financially.

Moreover, I think it is not necessary for a state to disseminate its citizens about each and every treaty to which it becomes a party. The reason why I think so is because the whole process of informing people about the norms of certain international treaty requires a lot of financial resources, and in most of the times, a state cannot allow itself to spend big amount of money for that. Thus, from my point of view, the treaties should be divided into two categories: the ones whose provisions should be disseminated among target group, and the ones, whose provisions should be disseminated to the whole population of the state. As an example of the treaties of the first category, I would like to provide the International Treaty on Plant Genetic Resources for Food and Agriculture or simple known as International Seed Treaty. For the effective implementation of this treaty, states which are parties to it, hold educational modules in a series of training materials.

The module provides general information for newcomers to the Treaty and the crop diversity policy area and explains technical terms and concepts in an easily understandable language. The forthcoming modules focus on the Treaty's main components: Conservation and sustainable use, Farmers' Rights, the Multilateral System of Access and Benefit-sharing and the Funding Strategy.

The target learner groups of the modules include policy makers and their staff, civil servants, gene bank staff, plant breeders, farmers' organizations, other civil society organizations, the media, academia and prospective donors.²⁹ In other words, there is a target group for every treaty.

As for the treaties of the second category, I think that the Human Rights Treaties and the Treaties which have obligatory delimitation provision should be there.

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¹⁸ http://www.unece.org/fileadmin/DAM/env/pp/ documents/cep43e.pdf

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