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CORRELATION BETWEEN TWO VERSIONS OF THE RULE OF LAW PRINCIPLE: DYNAMICS FOR THE TARGET DETERMINATION

The article constitutes an initial attempt to combine all existing in modern scientific literature approaches devoted to the interconnection of two rule of law versions – international and national. Accordingly, the article illustrates the contextual interplay between two levels of legal orders. Viewing interfaces between international rule of law principle and its domestic analogue through the prism of their correlation, the author marks out three important aspects in such synergy. On the basis of comparative research, it is concluded that among most substantive correlation aspect is the dialectical nexus between rule of law principles that are operated both at the international and national levels.

Key words: *rule of law principle, legal order, correlation between international and national versions of rule of law principle.*

Problem statement and some introductory remarks. Rule of law, as the universally recognized idea, had not been immune from the intensive expansion of theoretically-methodological scientific investigations. This is mainly due to the fact that this principle provides civil society with an appropriate forum for motivating action by public authorities in the different areas of human activity, and thus promoting its essential values. Sometimes, the inconsistency of national government's action towards its citizens hinders successful development. Thereby, nation-building requires time, efforts and commitment in order for the process to make a positive contribution. Nevertheless, inverse relationships between international community and national societies have shown product of such cooperation has significant impact on legislative transformation processes for both international and domestic legal systems. That is why issues related to the development of the rule of law standards are still relevant and serve as a focal point in almost all modern scientific researches.

Recent trends in scientific researches. It is hard enough to reflect all existing academic works related to the investigation of the rule of law principle. But, in the past decade, the number of researches has also risen sharply owing to a certain changes in international legislative system. Consequently, new aspects of the rule of law principle have emerged. Particularly, among such aspects is the rule of law functioning at the international level, its linkages and mutual interference with the corresponding national analogue. At the same time, overwhelming majority of scientific investigations is mostly devoted to the "pure international law", while general theoretical "synergy" parameters of abovementioned mutual influences remain "invisible" for the modern rule of law scholars.

However, there are some academic works which are of the special theoretic interest. Namely, among them are scientific articles of A. Nollkaemper who focuses on the result of the interrelationships between international rule of law and its national versions. Another researcher from Netherlands – M. Kenatake has also drawn her attention to the existing interfaces between two variants of the rule of law principle. Additionally, abovementioned issue of "coexistence" had been the subject of scientific inquiry of such well-known scholars as: B. Chimni, N. Hachez, F. Neate, H. Owada, J. Waldron, A. Watts, J. Wouters.

At the same time, contemporary general theory of law is badly in need of a complete structural and categorical overhaul in our thinking about the rule of law importance

in the context of current global reformation processes.

Analyzed above recent trends in scientific investigations regarding the rule of law principle, have provided the author with an opportunity to highlight the following principle **objectives** of the research: 1) to identify what interfaces are between two versions of the rule of law – international and national; 2) exactly what aspect of such interactions is crucial for the further substantive modification of the rule of law principle.

Major ideas presentation. Present developments in the rule of law field show there is a growing trend in scholar's world to use in academic literature two formulations – international rule of law and its national analogue. This tends to suggest there are some substantial differences between two abovementioned categories. Essentially, the concept of international rule of law accumulates historical, legal and sociocultural features of both international organizations law and the law of different countries all over the world (including certain national legal traditions).

However, among contemporary rule of law researchers, different approaches may prevail regarding the interaction between two versions of this principle. In this vein, former Judge of the International Court of Justice, H. Owada once pointed out: "<…> analysis of the role of the Rule of Law as applied at the international level requires a reconceptualization of the principle in such a way as to take account of systematic differences between the domestic and international legal order" [1, p. 155]. With special emphasis on this, in an attempt to understand the operation of rule of law in practice, it is alleged in the literature that the linkages between national and international rule of law can be analyzed from three different positions, among which, particularly, are: 1) how the concept of national rule of law, understands, accepts and resists on its international version; 2) how the concept of international rule of law understands, accepts and opposes the national concept and 3) in what way can be assessed and appreciated such interaction by the international community. Combining formal and material requirements, the rule of law both at the level of national public law and international human rights law can be defined as the regulator of governmental power. In other words, the rule of law serves as a tool for regulating the conduct of the government, the exercise of its authority over individuals and legal entities within its jurisdiction. At the same time, it must be taken into account that the international rule of law is intended to regulate not only intergovernmental relations, but also legal relations between international organizations and states or individuals. However, it should be borne in mind that the rules of international and national law may regulate the same legal relationship in a slightly different ways. Such simultaneous regulation creates a number of situations when the subjects of law are circumvented, which in its turn resulted in a conflict of law [2, p. 2–3].

Within this range of issues, position of B. Chimni can be deemed as reasonable one. In particular, he believes that the conceptual formulation of comprehensive international rule of law definition is complicated enough as the very idea of this principle was first articulated within the framework of national legal systems with those characteristics (for example, the existence of a constitution, the limited nature of the executive power, judicial system with compulsory jurisdiction, certain forms of manifestation of the principle of separation of powers), which are either absent at all or incompletely presented at the international level [3, p. 292].

Against this background, N. Hachez emphasizes on the multifaceted and complex nature of the international legal order. Thus, two premises should be taken into account when addressing the issue of existing nexus between two versions of the rule of law principle:

(1) formal differences between international and domestic legal orders, where the rule of law principle is actively functioning; primarily, national context presupposes rule of law's essential task is to create appropriate and effective mechanisms aimed at protection of the citizens (legal subjects) from governmental abuse; along with this, international framework implies the existence of such-called "horizontal relationships"

between States, that is, there is no government in its common sense;

(2) substantial differences between international and domestic legal orders, which is reflected in the structures of legal orders themselves; there are limitation imposed on the legal subjects to exercise their governmental power; in this regard the question arise about the legality which the rule of law embodies; hence, not all formal rule of law requirements can be transposed to the international legal order [4, p. 316–317].

This has inspired the author to talk about the correlation between international and national rule of law, which can be considered from the following perspectives: a) significant discrepancy and issue of the balance; b) possibility of the transposition of one version to another and vice versa; c) dialectical interrelations between two versions of the rule of law principle.

1. Significant discrepancy and issue of the balance between international and national rule of law principle. In one of his scientific works J. Waldron has stressed the difference between national and international rule of law lies primarily in different methods and ways of applying this principle. The absence of an "international sovereign power as such is greatly complicated by attempts to understand the purpose of international rule of law, since the absence of centralized power means that international governmental bodies as well as the international legislative process may in some cases not comply with the requirements of the researched principle" [5, p. 317].

The author agrees to a certain extent with this thesis and indicates the following. Unlike the national rule of law, a key objective of the international version is not to protect individuals from arbitrary actions of the state, its agencies and officials. At this level, the rule of law is intended to create conditions for equal and independent functioning of all countries in the world as full-fledged subjects of international law. Furthermore, international rule of law serves as a toolkit for protection of the human rights and freedoms which have been violated within the national legal system. Here, international institutions are among the key actors that actively operate and develop the rule of law principle during their "operations".

To support abovementioned idea further, well-known theorist A. Watts believes differences between international rule of law and the rule of law operated within the national legal system framework, includes: 1) the objectives inherent in the rule of law principle at the national level; in this context, commonly, the rule of law includes the protection of the individuals rights against arbitrary actions of state authorities; 2) more specific requirements of the rule of law principle at the national level often reflect particular historical and constitutional evolution of state; given this, international rule of law cannot be equated with its national analogue [6, p. 16].

It has been already mentioned above that the differences between international and national rule of law predominantly are analyzed from the perspective of national and international legal orders, namely their institutional distinction. Indeed, in comparison with national, international legal order is characterized by a pretty weak institutionalization level and the complete lack of a centralized and hierarchical organization of the exercise of power. Instead, such connections are themselves horizontal [7, p. 299–300; 8, p. 192–193; 9, p. 75]. In this vein, some authors add that law-making process is in itself at the international level differs by a certain diffusion (dispersion). However, both in practice and within theoretical science there is a clear division into a soft and hard law, which helps to define the norms that are mandatory and norms that are not binding on subjects of international law [3, p. 292–293].

Extending this approach, I. Hurd in his scientific article "International rule of law and the domestic analogy" argues following. In reliance on the instrumental approach to the essence of international law, the author notes the certain differences between national and international rule of law are based on distinct functions they perform. Within the national legal system, the rule of law principle aims to establish restrictions on the exercise of state power and to ensure the stable functioning of the law, norms of which will be applied equally to all citizens

of the particular state. The concept of international rule of law is based on a slightly different model of the relationship between actors and international law, which is based, first of all, on the legitimacy of the obligations transfer through consent. In spite of these differences, from a theoretical point of view, both versions of the rule of law are ideologically united around a liberal normative view on politics and society. In particular, the rule of law ensures the activities of the authorities (both at the international and national levels) in supporting, securing and developing other legal values. Against this background, rule of law is an alternative to arbitrary exercise of power and presupposes the subordination to universally accepted rules of conduct existed both at the international and national levels [10, p. 366–367].

2. Possibility of the transposition of one version to another and vice versa. In the majority of cases, the issue of transposition of the rule of law characteristics into another legal level is boiled down to the scientists' negative response. For instance, A. Watts believes there are at least two reasons why direct transposition of the national rule of law (namely, its content) to the international level is impossible. First, the purposes served the rule of law at the national level (typically, the protection of human rights and the limitation of public authorities' power), significantly differ from those formed within the international legal space. Secondly, it must be taken into account that the requirements of national rule of law are not identical with those requirements that exist at the international level [6, p. 16]. Another prominent scholar H. Aust is of the opinion that it is not a constructive approach of scholars, who develop the notion of international rule of law on the basis of a "common denominator" of the various concepts of the rule of law existing in national legal systems. Characteristic features of domestic rule of law variations cannot be fully borrowed when constructing an international model. At the same time, it is reasonably considered that within the international law framework unique concept of the rule of law should be clearly defined [11, p. 55].

In this regard, some authors stress on a number of theoretical-methodological and practical issues related to the transposition of the three basic rule of law components into the international level, namely: 1) public and stable law; 2) state power, limited by law; 3) the uniform and consistent application of the law. That is why the international rule of law formula cannot be simply deduced from the concept of national rule of law. These two versions of rule of law are developed separately, addressing various political challenges and needs, and they are based on different principles of political power organization [10, p. 376]. Moreover, when transposing the rule of law to the international level, its concept should cover not only the process of adopting the law, its application and enforcement, but also the material aspect of what this law constitutes by itself [8, p. 193].

As can be seen from the conducted above analysis, most scholars considering the possibility of transposition make an appeal to the structural differentiation of the rule of law components at this two levels. Against this background, A. Watts marked out the elements which are necessary for the rule of law principle to be employed in international community. Essentially, among them are:

– completeness and certainty of the law: to employ and respect the rule of law principle in a certain community means that law is primarily capable to govern all situations that might arise; talking about "completeness" of law means two premises: a) it means that "every international situation is capable of being determined as a "matter of law"; along with this, there must be a comprehensive mechanism for the application of already existed legal rules; additionally, this law enforcement mechanism should be accompanied by well-known and universally recognized legal techniques, other legal rules or transnational principles of law; b) the formal requirement of application must be followed by fact that such law is applied to all members of the certain community;

– equality before the law (in the international context predominantly is manifested in so-called "principle of sovereign equality of States"): all States which come within the scope of a rule of law must be treated equally in the application of that rule to them without any exceptions; in these circumstances,

it is not asserted that there is only one way of application the law to all states without taking into consideration some specific features of such states; the main idea is that there should not be any discrimination between States in their subjection to rules of law which in principle apply to them; furthermore, States should have equal standing in the formulation of rules of international law, including the making of changes to the law;

– absence of arbitrary power: there should be a well-defined set of limits of areas in which international law allows a State to act at its pleasure without having to account for its actions internationally;

– effective application of the law with following three aspects: a) judicial settlement – there must be an ability of a State which finds itself with a legal difference with another State to have recourse to a judicial tribunal to have that differences resolved; b) enforcement – the ability of the international community to ensure that if a State refuses to comply with the law, the law can nevertheless be enforces against it; c) application in practice – regular application of the law by States in their day-to-day dealings with each other as part of regular pattern of their international relations [6, p. 27–33].

3. Dialectical interrelations between two versions of the rule of law principle. This third aspect is usually analyzed through the approach according to which the particular forms of the rule of law manifestation should be considered from the perspective of following three levels of legal relations between national and international legal orders.

The first level of relations envisages the least significant interconnection between national and international rule of law, since the latter is defined precisely as a tool for regulating horizontal relations between states (as what has been mentioned at the beginning of the current research). As the crucial goal of this principle is to create conditions for limiting the national governments actions and protecting individuals inside the national legal system, the regulation of relations with the national rule of law much differs from those relations that are intended to regulate its international version. They differ from each other by the subjects to which such powers are exercised, by the nature of decisions based on the rule of law principle with broader legal and political contexts. From this perspective, international rule of law should not be designed as a set of means serving to protect sovereign states, analogously to the national version aimed at protecting individuals' rights and ensuring their autonomy.

At the second level, the linkages between national and international rule of law is much stronger due to the fact that the international rule of law is used to regulate the exercise of power by the state (and its bodies) in relation to individuals and non-governmental organizations. A striking example is the international human rights law, since a large number of international treaties and customary laws are intended to regulate relations related to ensuring the protection of human rights and freedoms by national governments.

The functional interaction between two versions of the rule of law principle most fully manifests itself at the third level of relations, since international institutions review the powers exercised by the government on the basis of standards that may differ materially from those that exist in national legislation. For example, judicial human rights institutions (in particular, the European Court of Human Rights) examine national governments decision to ensure that they conform to the norms and standards on human rights and freedoms. In exceptional cases, international criminal courts and tribunals (the International Criminal Court, the International Criminal Tribunal for the former Yugoslavia, etc.) have actually substitute government decisions by reversing them and taking further decisions in order to withdraw the indictments against these individuals. Under limited circumstances, international political authorities may also to a certain extent replace the competence of national governments (for example, the United Nations Security Council sanctions committees) [2, p. 5–7].

Final remarks and recommendations of the current research. The formalization of the rule of law principle at the international level shows that existing scientific researches tend to illustrate one of two op-

posing trends. The essence of the first is to operate the rule of law principle in the international legal arena as an indicator of the equal relationships between the states as the independent subjects of international law. The second trend continues the ideological origins of the first and consists in contrasting the content characteristics of the observed phenomena on the basis. At the same time, this contrast is revealed through the parametric differences between the legal orders itself (international and national).

It seems necessary to expand existed directions of research with the methodological clarification on the variability of the targeted heteronomy of the rule of law principle at the international level. This is primarily expressed in the dialectical interaction of the national version of the rule of law principle with its international analogue. Therefore, the decisive methodological basis for the further study will be the idea that the rule of law can be materialized not only as a principle of international law or the constitutional basis of the functioning of national legal systems. The value-purpose nature of this principle involves meaningful interpenetration of international and national law and order, convergence of national legal systems. Therefore, the theoretical and legal study of the process and the results of such interpenetration necessarily lead to the urgent need to find the appropriate occurrence of the interaction between national legal systems with the international, taking into account relevant trends in the field of globalization and integration processes.

Aspects analyzed in the context of author's research have shown correlations between international and national rule of law principles are strong enough, especially those related to the dialectical interrelations. Interfaces between national and international rule of law are predominantly manifested in fact that debates regarding the effectiveness of international rule of law are related primarily to the concern of the international community to overcome the shortcomings in the rule of law functioning within a particular state, especially in the context of post-conflict situations.

It is significant that, despite substantial differences, international and national rule of law variants interact quite closely with each other. This interaction is reflected in following. First, international law affects and often defines the content of national rule of law. Secondly, the effective application of the international law (as one of the requirements of the rule of law at the international level) directly depends on the national rule of law. In this regard, there cannot be question about the efficiency or inefficiency of international rule of law, if it does not exist at all within the state.

Such dialectical interrelations are developed due to the fact that national practices regarding the rule of law principle constitute peculiar directions for modification of this principle within the framework of the international community. Subsequently, such modification processes shape the priority trends in the reformation of international law system itself, its readiness to meet current global society challenges.

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Ремінська Ю. Ю. Кореляція між двома версіями верховенства права: динаміка для визначення цільових завдань

Стаття є спробою об'єднати всі наявні в сучасній науковій літературі підходи, присвячені взаємозв'язку двох версій принципу верховенства права – міжнародного і національного. Отже, стаття демонструє контекстуальну взаємодію між двома рівнями правопорядку. У процесі вивчення взаємовпливу між принципом міжнародного верховенства права та його національним аналогом крізь призму їх співвідношення автор вказує на три важливих аспекти такої «синергічності». На основі порівняльних досліджень зроблено висновок про те, що найбільш суттєвим аспектом вищезазначеної кореляції є діалектичний зв'язок між принципом верховенства права, що діє як в межах міжнародного, так і в межах національного права.

Ключові слова: *принцип верховенства права, правопорядок, співвідношення міжнародного і національного варіантів принципу верховенства права.*

Реминская Ю. Ю. Корреляция между двумя версиями верховенства права: динамика для определения целевых задач

Статья представляет собой первоначальную попытку объединить все существующие в современной научной литературе подходы, касающиеся взаимосвязи двух версий принципа верховенства права – международного и национального. Показано контекстуальное взаимодействие между двумя уровнями правопорядка. Изучая взаимосвязь между принципом международного верховенства права и его национальным аналогом через призму их соотношения, автор отмечает три важных аспекта такого синергизма. На основе сравнительных исследований сделан вывод о том, что наиболее существенным аспектом вышеуказанной корреляции является диалектическая связь между принципом верховенства права, действующим как в рамках международного, так и в пределах национального права.

Ключевые слова: *принцип верховенства права, правопорядок, соотношение международного и национального варианта принципа верховенства права.*