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INTRUSION OF INTERNATIONAL LAW INTO THE NATIONAL LEGAL SYSTEM

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The subject of the research is the peculiarities of the implementation of international law in national legal systems, the law enforcement practice of the implementation of international legal obligations of the state, doctrinal approaches to the interaction of the norms of international and domestic law.

The purpose of the article is to confirm or disprove the hypothesis that the limits, forms and methods of the ex-ante intrusion of international law into the national legal system are determined not only as a result of the agreed will of States, but also against such will, under the influence of the interests of individual States or their political blocs that occupy a dominant position in an international organization.

Methodology. The authors use such general theoretical and specific scientific methods as comparative analysis, generalization, interpretation and classification as well as systemic analysis and formal logical methods.

The main results. The forms and methods of intrusion of international law into the legal systems are diversified. International law is not limited to interstate relations. Global processes require the development of new scientific approaches to understanding the processes of intrusion of international law into the legal systems of States. These processes require the study of the forms and methods of the impact of international law and international institutions on the national legal order. States are sometimes forced to implement measures developed in the international implementation mechanism (due to the need for international financial assistance as well as the inability to single-handedly defeat internal corruption, create a favorable international image, etc.). The international legal invasion exist already ex – post through the decisions of international judicial bodies or the assertive recommendations of international organizations. Their demands are made not just to comply with international obligations, but to change national legislation. The implementation of the norms of international law in national legal systems should be carried out at the domestic level just as much as it is necessary to fulfill these international obligations. The law enforcement practice in the state is based solely on national principles of law, and it is unacceptable to comply with the requirements from the outside to change them from the point of view of the independence of the state. It is the exclusive right of each State to determine the content of acts of interpretation of international bodies in relation to the decisions and actions of specific States from the point of view of their national interests. We prove that every state has the important right to determine the limits of the invasion of international law in their national legal system: the contents of implementing legislation; the completeness of implementation of the decisions and recommendations of international bodies and courts; the recognition of the extraterritorial validity of foreign law and forms of its implementation.

Conclusions. The fundamental principle of international law- pacta sunt servanda – is transforming into a practical imperative – national legislation must change. This is due to the recognition of the jurisdiction of international judicial bodies. This is due to the extraterritorial effect of foreign law; it is connected with the transnational character of the law of international integration entities. This is due to the inability of individual States to resist exponential corruption. The continuous nature of the intrusion of international law into national legal systems is reflected in the various methods of such interference. The article proves the importance of each state having the right to independently determine the limits of the intrusion of international law into their national legal system.

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1. Introduction.

The advance of globalization has changed the concept of a clear division between the jurisdiction of a State based on its sovereignty and everything beyond its borders [1, p. 6]. International law is no longer limited to inter-State relations concerning topics such as territory, war and peace; it also regulates legal relations that until recently were considered to fall under the exclusive competence of States and their legal orders: health, economy, labor standards, environmental protection, etc. [2, p. 48]. The development of international law has led to the inclusion of individuals and legal entities as subjects (for example, commercial organizations are responsible for the observance of human rights) [3, p.5]. However, the most visible actors in the international legal order are still States and, to a lesser extent, the international organization.

In legal science, it is recognized that international law does not have the power to change or create norms of domestic law and "the norms of international law are binding only to the extent that the state "feels" bound by its prescriptions" [4, p.53]. As soon as these norms appeared, primarily through treaties or customs, States themselves assumed the task of ensuring compliance with international rules [5, p. 13].

The term "implementation" is defined as the act of enacting a rule of international law within the framework of a State's legal order, and the effectiveness of domestic implementation measures is a prerequisite for the State's compliance with the treaty . "Implementation refers to the measures that States take to implement international agreements in their domestic law" [6, p. 4].

2. Discussion

The problem of bringing into effect the norms of international law on the territory of the state is solved by each country independently, since the forms and methods of ensuring the implementation of international obligations (norms) accepted by the state belong to the exclusive sovereign right of each country [7, p. 29].

The implementation of the norms of international law is a purposeful organizational and legal activity of States undertaken individually, collectively or within the framework of international organizations in order to timely, comprehensively and fully implement the obligations they have assumed in accordance with international law [8, p.62]. An international obligation is a rule of conduct for subjects of international law. Such a rule is one-it has international legal significance, but it will operate in two different legal forms: the agreed (contractual) will of States; and as a national legal norm, the implementation of which is an international legal obligation of this State.

The international and national legal orders should be treated as separate jurisdictions. This is a situation in which international law, in order to achieve the goals laid down in an international legal document [9, p .22], imposes an obligation on the State to adopt legislation at the national level. Such legislation is called "implementation" [9, p.29]. Obligations for a State that enacts implementing legislation are usually part of international treaties or decisions of international organizations, for example, some UN Security Council resolutions on terrorism and on the non-proliferation of weapons of mass destruction.

Based on the existence of a "gap" between international and national law, there are two different systems of implementation or two independent mechanisms of implementation that relate to it as parts and a whole, each of which consists of its own structural elements [8, p.58].

The international legal instruments of

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implementation should include the activities of the statutory bodies of organizations, for example, the UN, the Council of Europe – the Security Council, the European Court of Human Rights, and GRECO, respectively.

At the national level, the implementation mechanism is a system of legal instruments that promote the consolidation and reflection in domestic legislation of those international legal norms that are recognized by States as standards. Thus, to ensure the application of the norms of international treaties by the courts, the Department of International Law was established in the Supreme Court of the Russian Federation, which is part of the Department of Systematization of Legislation and Analysis of Judicial Practice of the Supreme Court of the Russian Federation [10, p.160]. At the same time, the domestic implementation legislation should not contradict the domestic laws, since this would make the implementation legislation ineffective.

The most important step after the adoption of implementing legislation (ex post) is its effective application in practice, and its mere existence is not sufficient to recognize the State's compliance with its international obligations. In other words, the implementation of international law within the domestic legal system should go beyond the development or modification of the texts of legal norms.

Thus, the legislative, executive and judicial bodies of States serve as a link between the international and national legal order – domestic implementing acts (whether legislative, executive or judicial) remain of great importance in the implementation of international law. National implementation measures are an important element in the implementation of international law; without these measures, international law will not be implemented, and legal instruments will not be able to have legal and practical consequences in domestic jurisdiction [11, p. 91]. Therefore, it is necessary to recognize such a function of the State as the implementation of international law.

The article does not specifically set out to consider the elements of the national legal system (legal system, legal culture and legal practice), which are invaded by international law in a broad sense (norms, institutions), leaving these problems for further research. We will try to establish the forms and methods of such an invasion.

The term "connection" in international and national aspects implies the existence of separate legal orders, from the point of view of two theoretical approaches to answering this question about the place that international law occupies in domestic law, the hierarchy of norms, i.e. whether international law is higher or lower in relation to the norms of domestic law: dualism and monism [12, p.48]. Well-known proponents of the dualistic concept of relations between international and national law – the Italian Dionisio Ancilotti (1867-1950) and the German Heinrich Tripel (1868-1946), argued that there are differences between international and national law [13, p.52-53]. Supporters of monism are of the opinion that international and national law are one part of a single legal order and this is manifested at the international or national level, in terms of the simultaneous impact of parallel rules [14, p.16-17] on one object of international and domestic norms [15, p. 326]. There are two branches of monism: monism, which considers international law superior to national law, and monism, which asserts that national law is of a higher rank than international law [5, p. 52].

All that was said earlier about the implementation of international law norms are provisions that are quite well-established in the theory of international law [16, 17], including at the level of dissertation research [18-24].

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3. Results of the study

3.1. Interaction of international and domestic law

However, the diversity of existing legal systems reflects the lack of global or regional consensus on the relationship between international and domestic law from a national perspective: States have opened their domestic jurisdictions to international law to varying degrees. The various modalities of reception of international law in the domestic legal order range from pure monism to pure dualism and what is in between.

Thus, a State that adheres to a strong dualism will deny the validity of international legal norms in the domestic legal order, except in cases where the internal (legislative) order of the State does not apply.) the act of transformation or incorporation prescribed to the international norm the quality of the law [1, p. 7]. Special statutory incorporation requires that each contract be directly incorporated before it can be applied within the country and incorporated into the domestic legal order [25, p.98]. After the incorporation of the provisions of the treaty, the implementation act will be applied, and not the provisions of the treaty themselves [26, p. 622-623]. An exception to this general rule is the contracts concluded by EU institutions. They are directly applicable in the legal order of the member States as European law [26, pp. 622-623].

The fundamental principles of dualism have been confirmed by the practice of states throughout the twentieth century and up to the present time [14, p.20]. Dualism, from this point of view, implies a clear separation between international law and national law: States are responsible for implementing treaty obligations under international law within their domestic law, and they can choose the most appropriate means, taking into account the conferring of competence on various bodies at the national level. In other words, a State has the freedom to empower the executive, legislative or judicial authorities to apply or implement the relevant rules of international law as long as the agreements do not conflict with the limits of the relevant international obligations of that State.

3.2. Implementation legislation

The international standards to be implemented in the national legal system can be classified as follows: the standards to be implemented by the executive body; the standards to be applied by the judicial authorities; and the standards to be implemented by the legislative body. The latter category can be divided into standards that contain a clear obligation to adopt implementing legislation and standards that do so implicitly (i.e., explicitly and implicitly). The difference between the two categories is that the wording of the standard falling under the latter subcategory does not explicitly refer to the adoption of legislation, but uses related concepts such as measures or strategies.

Implementation legislation, in turn, can be divided into acts of implementation and acts of incorporation, which differ in at least two ways [9, p.38]. First, given that acts of implementation may be required to develop or supplement an international legal norm that is binding on a State in order to ensure the implementation of the objectives of a treaty (usually defined in an international instrument), acts of incorporation do not provide for such development. Instead of developing or supplementing international legal obligations, they serve the sole purpose of attributing the quality of law to existing provisions of international origin in domestic law. Secondly, the legal obligation to accept an act of implementation arises exclusively from an international legal instrument. The act of incorporation, on the other hand, is primarily

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required by the law of the State. Thus, acts of implementation and acts of incorporation can be distinguished from a theoretical point of view, but from a practical point of view, it is quite possible that a national legislative act will simultaneously perform the international legal function of implementing and incorporating the document. Ultimately, much depends on each national legal order, its specific features.

In the choice of methods and forms of borrowing (otherwise — reception) of the norms of international law, States remain free. The state, domestic law, as if in response to international law, clarifies (formalizes) these responsibilities are determined by the bodies responsible for the implementation of international treaties [28, p.130]. Thus, in accordance with article 34, part 3, of the 2000 Convention against Transnational Organized Crime, a State party may take more stringent or severe measures than those provided for in this Convention. The agreement thus establishes minimum implementation standards that ensure the harmonization of domestic measures to prevent and combat transnational organized crime. At the same time, the text of this Convention relies heavily on the legal conditions and concepts that are used in the jurisdictions of the States parties to it, and does not require a literal transposition of the terms and concepts used in it.

Note that mass borrowing is a common phenomenon in law. "Legal harmonization" is a common approach in international law in which States agree on a set of policy objectives. Each state subsequently makes changes to its domestic legislation, considering it necessary to meet the stated policy goals. Yu. A. Tikhomirov even suggests developing a set of typical requirements for the "legal readiness" to implement the norms of international law [29, p.89].

The concept of "legal unification" means that the applicable domestic laws are replaced by a single set of agreed rules at the intergovernmental or supranational level [30, p. 368].

No special international legal acts regulating at least in a general form the procedure for the implementation of international obligations were adopted [8. P. 58]. However, there is a similar practice in some areas. An example of a national legislative model for the implementation of international law is the Act of the People's Republic of China "On the Implementation of the United Nations Convention against Corruption" (Act to Implement the United Nations Convention against Corruption. May 20, 2015). The Act defines the internal legal status of UNCAC, which emphasizes the fulfillment of the relevant obligations under international law [31, p. 339-342].

"Laws, and first of all, the Constitution, determine the legal position of the state in international relations" [4, p. 236]. Thus, the national mechanism for implementing the norms of international law is based on the Constitution of the Russian Federation, Federal Law No. 101-FZ of July 15, 1995 "On International Treaties of the Russian Federation", etc., that is, those normative acts that determine the place of international law in the national legal system, solve the question of the relationship between these two systems.

Based on the content of the National Security Strategy of the Russian Federation, it can be concluded that at the strategic level for our country, the implementation of international law is important only within the framework of international relations – "the rule of international law in interstate relations" "the creation of a stable and stable system of international relations based on international law" (paragraphs 8 and 87 of the Strategy). In order to preserve strategic stability, the Russian Federation contributes to the preservation of the stability of the international legal system

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(paragraph 104).

National legislation is primarily an internal matter and States are not required to inform other States of its adoption . Moreover, the mere adoption of a law contrary to the legal obligations of a State would not amount to an internationally wrongful act, and only when that law was applied in one or more cases would such conduct entail international responsibility .

In the case law of the ECHR, when asked whether States parties to the ECHR are under an obligation to repeal domestic legislation contrary to the provisions of the treaty, even if the relevant domestic legislation is not applied in practice, the court suggested that the very existence of such laws may, in the absence of application in practice, amount to a violation of the ECHR .

Perhaps this conclusion is based on the general principle of pacta sunt servanda. However, in practice, it turns out that modern international law in matters of implementation under the influence of supranational mechanisms follows not the well – established and universal principle "treaties must be respected", but the imperative-national laws must be changed lex oportet mutare, which well characterizes the conclusion that international law "broke through the armor" of national legal systems [32, p.5-6].

That is, the international perspective puts its law above the national one: a State cannot invoke the provisions of its domestic law as justification for its non-performance of a treaty . The International Court of Justice has confirmed that it is a fundamental principle of international law that international law prevails over domestic law.

3.3. Decisions of international courts

Federal Law No. 54-FZ of March 30, 1998 "On the Ratification of the Convention and the Protection of Rights and Fundamental Freedoms and the Protocols thereto", in Article 1, establishes: "The Russian Federation, in accordance with article 46 of the Convention, recognizes ipso facto and without special agreement the jurisdiction of the European Court of Human Rights as binding on the interpretation and application of the Convention and its Protocols." The Plenum of the Supreme Court of the Russian Federation in its Decision of October 10, 2003 "The Russian Federation, as a party to the Convention for the Protection of Human Rights and Fundamental Freedoms, recognizes the jurisdiction of the European Court of Human Rights as binding on the interpretation and application of the Convention and the Protocols thereto in the event of an alleged violation by the Russian Federation of the provisions of these treaty acts, when the alleged violation occurred after their entry into force in respect of the Russian Federation."

We see the legitimacy of the intrusion of decisions of international judicial bodies into the national legal system, since the ECHP has "jurisdiction" (positive obligations) and there is "responsibility" [33, p.5-7].

As amended by the Law of the Russian Federation on the Amendment to the Constitution of the Russian Federation of March 14, 2020 No. 1-FKZ "On Improving the regulation of certain issues of the organization and functioning of Public Power", it was established: "Decisions of interstate bodies adopted on the basis of the provisions of international treaties of the Russian Federation in their interpretation that contradicts the Constitution of the Russian Federation are not subject to enforcement in the Russian Federation" . Back in 2015. The Constitutional Court of the Russian Federation issued a Ruling on July 14, 2015. No. 21-P on the right of the Russian Federation not to execute the decisions of the ECHR if they contradict the Constitution of the Russian Federation .

As academician T. Ya. Khabrieva rightly points out, often the interpretation of

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international conventions by international organizations not only significantly expands the scope of international legal prescriptions, but also introduces significant elements of improvisation into them, which are not a direct reflection of the basic international legal norms [34, p.101].

3.4. Extraterritorial effect of foreign law

An analysis of international anti-corruption activities, for example, shows that when combining various practices (domestic, regional and international), typical organizational and legal complexes-models of anti – corruption state-building-have emerged. And in this regard, it is possible to raise the question not only about the implementation of the norms of international law aimed at combating corruption, but also about the implementation of practice, that is, standards, as a system of legal provisions, bodies implementing them and models of anti-corruption behavior (management and compliance). Such models (typical models) are formed in States, then, with a certain assessment (approval) and support from the international community, they are implemented in other states. Here, the experience of implementing the provisions of the FCPA and the UK Anti – Bribery Act (UK Bribery Act, 2010-UKBA) is indicative.

Blishchenko I. P. pointed out about the transformation of domestic law into part of international law, noting that English lawyers " declare that international law is part of common law, and this serves as a justification for the obligation of English courts to apply international law. Having proclaimed international law as the domestic law of Great Britain, English lawyers try to prove the possibility of transferring the" internationalized "common law to other states, stating that common law is an expression of universal, global "common law" [4, p.123].

3.5. Specialized anti-corruption courts

Disillusionment with the ability of the ordinary justice system to adequately combat corruption has led many countries to establish specialized anti-corruption institutions.

For example, a 1999 UNDP report on the development of human rights in South Asia, covering India, Pakistan, Bangladesh, Nepal and Sri Lanka, calls for "bold, concrete anti-corruption programmes" and calls for countries to establish special anti-corruption courts. Similar recommendations were made by other international organizations, as well as by national experts. For example, the Venice Commission, in its review of the draft law of Ukraine "On Anti-Corruption Courts", stated: "the fight against corruption and organized crime may require measures, procedures and institutions of a specialized nature... a special anti-corruption judicial body should be formed on a competitive basis from judges with an impeccable reputation, should be dependent only on the law and free from all outside influences, and should comply with the standards of the Council of Europe and the Venice Commission" [31, pp. 271-272].

It is assumed that the role of international experts (members of the Public Council of International Experts) in the appointment of judges is a guarantee of the independence of the Anti-Corruption Court of Ukraine and its ability to effectively perform its functions.

Based on the fact that Guatemala was unable to resist corruption in public institutions in the early 2000s, its Government requested assistance, in response to which the International Commission against Impunity in Guatemala (Comisión Internacional contra la Impunidad en Guatemala-CICIG) was established.

Such a commission is an experiment in outsourcing justice. In this regard, CICIG becomes an interesting and unique experiment

for scholars in the field of both international and constitutional law, as well as for those who focus on state-building after civil conflict, for comparative study [38].

CICIG is a new type of international body that is independent of the UN and is governed exclusively by its founding document. This body differs from a traditional international organization in that it is a fully autonomous organization that not only operates within the framework of domestic law, but is also governed by an agreement of international law.

CICIG is a pioneering and first-of-its-kind international body established between the State (Guatemala) and the UN, with broad coverage of Guatemala's domestic legal system and with the authority to fight corruption in the Guatemalan State.

CICIG was created in accordance with an agreement signed between the United Nations and the Government of Guatemala on December 12, 2006, the agreement was ratified by the Congress of the Republic on August 1, 2007 and entered into force on September 4, 2007. Acting as an independent international body, CICIG seeks to investigate the activities of illegal groups and clandestine security organizations in Guatemala – criminal groups that are believed to have infiltrated State institutions, promoting impunity and undermining democratic gains in Guatemala since the end of the country's armed conflict in the 1990s. It represents a groundbreaking initiative by the UN, together with a Member State, to strengthen the rule of law in a post–conflict country.

CICIG is a temporary institution that is funded solely for the purpose of fulfilling its mandate through voluntary contributions from various countries. As a result, a trust fund was established, which is administered by the United Nations Development Programme (UNDP). This guarantees the independence of the commission.

The CICIG Commissioner is appointed by the UN Secretary-General.

CICIG is developing recommendations for amendments to Guatemalan legislation. As stipulated in the CICIG founding agreement, such work is part of its mandate: "to make recommendations to the State of Guatemala on public policies to be adopted, including the necessary judicial and institutional reforms, in order to eradicate and prevent the resurgence of clandestine security structures and illegal security forces".

On January 7, 2019, the country's executive branch denounced the CICIG treaty, claiming that during its 11 years of existence, CICIG had violated national sovereignty and the rights of the people whose cases it was investigating. On January 9, the Constitutional Court issued a temporary ruling suspending the President's denunciation of the CICIG treaty. However, in parallel, the executive branch and its supporters in Congress initiated the impeachment process against the judges of the Constitutional Court .

Thus, the Constitutional Court of Guatemala has created a new monistic approach to international law within the national legal system, creating a scenario in which international legal instruments, such as the Inter-American Democratic Charter and the American Convention on Human Rights, become additional constitutional measures aimed at national actors.

For example, CICIG raises new questions about the boundaries of international organizations in a national context. The CICIG experiment also demonstrates the need to rethink the role of sovereignty and how it is constitutionally provided for in the domestic environment. Although CICIG has not yet implemented any constitutional changes in Guatemala, internationally, CICIG has become a reference point for such changes. For example,

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in neighboring Honduras, another country plagued by corruption, the current Government has agreed to establish a similar international body with the Organization of American States (OAS). As part of this new effort, the OAS has ratified a treaty with the Government of Honduras to assist in a "dialogue" on the reform of the Honduran judicial system.

3.6. International recommendations

International legal standards can be codified in additional documents, such as implementation guidelines and handbooks. Based on the lack of formal legal force in such documents, they are usually called "soft law" instruments. In the EU, for example, this term is used to refer to acts that are not binding, but nevertheless have a practical or legal meaning within their competence [39, p. 285].

The law-making powers of international organizations make it clear that a distinction should be made between their binding and non-binding decisions, although this strict dichotomy may be difficult to consistently maintain in practice [40, p. 6-8].

Binding decisions are made, for example, by the UN Security Council, General Assembly resolutions [41, p. 21-42]. An optional category is often referred to as "recommendations". Unlike binding decisions of international organizations, their recommendations do not create obligations for their addressees [42, p.880]. For example, the OECD "can make recommendations to the members of the organization to achieve its goals".

The CoE Parliamentary Assembly invites all member States to review their anti-corruption legislation, taking into account certain guidelines. The monitoring of compliance by Council of Europe States with the anti-corruption standards is entrusted to GRECO through rounds of mutual thematic evaluation, followed by a compliance procedure designed to assess the measures taken to implement the recommendations of GRECO. The work of GRECO directly requires the authorities (in the form of recommendations) not just to bring national legislation into line, but political changes, organizational and legislative reforms, the results of which are adopted by the report on the implementation of the recommendations of GRECO by a country.

3.7. EU Law

The EU "represents a new legal order of international law in the interests of which states have limited their sovereign rights", "effectively replacing national legislation with EU legislation" [47, p. 43]. Where EU legislation moves forward, the applicable domestic laws should be repealed. EU law prohibits the existence of domestic laws governing the subject matter covered under EU law. This is a direct consequence of the transfer of powers from the national level to the EU level: "to the extent that member States have transferred EU legislative powers to them, they no longer have the power to legislate in this area." That is, EU law takes precedence over the domestic legislation of the member States.

As a result of its monistic features, the European legal order relates to domestic legal orders in a fundamentally different way from the "non-European" international legal order. These features explain why the EU member states are obliged to implement the adopted European laws: if this obligation were absent, European law would depend on the willingness of the member states to maintain their supremacy over domestic laws [48, p.93].

The "law" created by this international organization is binding only on its member States [49, p. 120-121]. However, EU legislation may apply to its third-country associate members. Depending on the nature and content of the EU agreements with third countries, there are such forms as cooperation, partnership and

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association, where the latter provides for the transfer of certain issues of legal regulation to the EU as a supranational European body.

The provisions of the directives must be implemented by the States, and EU law prescribes the method of transposition. The criteria for its concreteness, accuracy and clarity do not necessarily entail the obligation to reproduce the directive verbatim in a concrete form, since , depending on their content, their "general legal context" may be sufficient for the persons concerned to be fully aware of their rights and obligations and, if necessary, to be able to invoke them in national courts."

The ECJ stated that requiring a specific transposition would be of little practical use, as the provision could be drawn up in general terms and establish rules that were general to the legal systems of the member States. Compliance with an EU directive that has such characteristics should be ensured in practice to the specific situation, regardless of whether it is translated into national legislation in exactly the same words. The main thing is that such regulations ensure the relevance of "legitimate expectations", have legal certainty with an accessible and effective procedure. With regard to the rudimentary nature of the rules, international legal regimes may explicitly grant States the freedom to "fill in" the missing parts at the national level.

4. Conclusions.

The analysis of international legal interventions of a regulatory nature in national legal systems allowed us to identify models of such an invasion in terms of form and methods.

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