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SELECTED ISSUES RELATING TO THE IMPLEMENTATION OF KAZAKHSTAN'S RATIFIED TREATIES

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Abstract. *The study is dedicated to formulating recommendations for addressing an issue arising from the first sentence of paragraph 3, Article 4 of the 1995 Constitution of Kazakhstan. This provision presents a potential risk of the state violating the principle of pacta sunt servanda, which is binding upon Kazakhstan under both customary international law and the law of treaties. The position advanced in this study is based on the observation that the constitutional provision in question, which addresses the priority of treaties in the event of a substantive conflict with domestic law, is limited to ratified treaties and those equated to them. This is in contrast to Article 11 of the 1969 Vienna Convention on the Law of Treaties, which stipulates that ratification is merely one of the means by which a state may express its consent to be bound by a treaty, alongside signature, exchange of instruments constituting a treaty, acceptance, approval and accession. Therefore, in cases of conflict between the provisions of national law and a treaty in force for Kazakhstan, where consent was expressed by means other than ratification or its equivalents, the constitutional provision in question would prevent national actors from applying the relevant treaty norm to resolve a domestic legal matter (dispute). Consequently, this situation will lead to violations by the state of Articles 26 and 27 of the 1969 Vienna Convention on the Law of Treaties.*

As a result of the study, the author recommends eliminating from the legislation the reference to a specific mean of expressing a state's consent to be bound by a treaty – such as ratification – when determining the precedence of treaties over domestic laws.

Keywords: *primacy of treaties, pacta sunt servanda, domestic application of treaties, law of treaties.*

ҚАЗАҚСТАН РАТИФИКАЦИЯЛАҒАН ХАЛЫҚАРАЛЫҚ ШАРТТАРДЫ ІСКЕ АСЫРУДЫҢ ЖЕКЕЛЕГЕН МӘСЕЛЕЛЕРІ

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Аннотация. *Зерттеу 1995 жылғы Қазақстан Республикасы Конституциясының 4-бабы 3-тармағының бірінші сөйлемінен туындайтын мәселені шешу бойынша ұсынымдар әзірлеуге арналған. Оған сәйкес мемлекет тарабымен Қазақстан үшін халықаралық әдет-ғұрып және халықаралық шарттар құқықтары тұрғысынан міндетті pacta sunt servanda қағидасы бұзылуының ықтимал мүмкіндігі бар. Мақала мәселесінің себебі халықаралық шарт және ұлттық заң ережелері арасында мағыналы қақтығыс болған жағдайда Конституция ережесінің тек ратификацияланған және оларға теңестірілген халықаралық шарттармен шектелетіндігі болып танылады. Алайда 1969 жылғы халықаралық шарттар құқығы туралы Вена конвенциясының 11-бабына сәйкес, ратификациялау – қол қою, қабылдау, бекіту, қосылу және тағы басқа әдістермен қатар мемлекет тарабымен халықаралық шарт міндеттілігіне келісім білдірудің бір ғана әдісі. Демек, ұлттық заң және ратификациялаудан өзгеше не ратификациялауға теңестірілген тәсілден өзгеше түрде келісім білдірілген Қазақстан халықаралық шарты ережелері арасында қайшылықтар болған жағдайда қаралып отырған конституциялық ереже ұлттық құқық субъектісіне*

пайда болған құқықтық қатынасыты (дауды) реттеу үшін халықаралық шарттың тиісті нормасын қолдануға мүмкіндік бермейді. Өз кезегінде, мұндай жағдай мемлекет тарапымен 1969 жылғы халықаралық шарттар құқығы туралы Вена Конвенциясының 26 және 27-баптарының бұзылуына алып келеді.

Зерттеу қорытындысы ретінде автор халықаралық шарттардың мемлекет заңдары алдындағы басымдылығын айқындау кезінде ратификациялау тәрізді халықаралық шарт міндеттілігіне мемлекет келісімін білдірудің жеке түрін заңнамадан алып тастау туралы ұсыным ұсынады.

Түйінді сөздер: *халықаралық шарттар басымдылығы, pacta sunt servanda, халықаралық шарттардың мемлекетішілік қолданылуы, халықаралық шарттар құқығы.*

НЕКОТОРЫЕ ВОПРОСЫ РЕАЛИЗАЦИИ РАТИФИЦИРОВАННЫХ МЕЖДУНАРОДНЫХ ДОГОВОРОВ КАЗАХСТАНА

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Аннотация. *Исследование посвящено к выработке рекомендаций по решению проблемы, вытекающей из первого предложения п.3 ст.4 Конституции Казахстана 1995 года, согласно которому имеется потенциальная вероятность нарушения государством принципа pacta sunt servanda, являющийся обязательным для Казахстана с точки зрения как обычного международного права, так и права международных договоров. Представленная позиция связана с тем, что отмеченное положение Конституции для урегулирования вопроса о придании преимущественной силы международному договору на случай его содержательного столкновения с национальным законом ограничивается ратифицированными и приравненными к ним международными договорами, в то время как согласно ст.11 Венской конвенции о праве международных договоров 1969 года, ратификация представляет собой лишь один из способов выражения согласия государства на обязательность для него договора наряду с подписанием, обменом документами, образующими договор, принятием, утверждением и присоединением. Следовательно, в случае наличия коллизии между положениями национального закона и действующего для Казахстана международного договора, согласие на который выражено иным от ратификации либо иным от приравненного к ратификации способом, рассматриваемое конституционное положение не позволит субъекту национального права использовать релевантную норму международного договора для урегулирования внутригосударственного общественного отношения (спора). В свою очередь, подобная ситуация приведет к нарушению со стороны государства статей 26 и 27 Венской конвенции о праве международных договоров 1969 года.*

В качестве итогов исследования автором была приведена рекомендация исключить из законодательства ссылку на отдельный способ выражения согласия государства на обязательность для него договора как ратификация при определении преимущественной силы международных договоров перед законами государства.

Ключевые слова: *примат международных договоров, pacta sunt servanda, внутригосударственное применение международных договоров, право международных договоров.*

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Introduction

The analysis of the first sentence of paragraph 3, Article 4 of the 1995 Constitution of Kazakhstan[1], specifically the domestic prioritization of

[1] *The first sentence of paragraph 3, Article 4 of the Constitution of the Republic of Kazakhstan, adopted by national referendum on August 30, 1995, as amended on June 8, 2022, states: "Treaties ratified by the Republic shall have priority over its laws" // URL: https://adilet.zan.kz/rus/docs/K950001000_ (date of reference: 1.01. 2025).*

exclusively ratified and equivalent treaties, raises several issues. These issues are associated with discrepancies between this provision and the nature of international obligations, as well as the potential violation of the norms established by the 1969 Vienna Convention on the Law of Treaties (hereinafter – the 1969 VCLT). The concern arises because, when resolving the question of granting priority to a particular treaty in the event of a conflict with national laws, the constitutional provision in question is limited to ratified and equivalent[2] treaties. However, under Article 11 of the 1969 VCLT, ratification is merely one of several means by which a state may express its consent to be bound by a treaty, alongside other means such as signature, exchange of instruments constituting a treaty, acceptance, approval, and accession. Consequently, in cases of conflict between the provisions of domestic law and a treaty in force for Kazakhstan, to which the state has consented by a mean other than ratification or an equivalent procedure, the first sentence of paragraph 3, Article 4 of the 1995 Constitution of Kazakhstan would prevent legal authorities from applying the relevant norms of the treaty to resolve domestic legal dispute. This would constitute a violation by the state of Articles 26 and 27 of the 1969 VCLT, which stipulate the principle of pacta sunt servanda and prohibition a state from invoking its internal law as justification for failure to perform a treaty obligation. For instance, in the State Institution "Customs Control Department for the Aktobe Region" versus LLP "Brig"[3] concerning the settlement of debt and fines on import duties for the import of malt beer from Ukraine, the court denied the appeal of the customs authority. It was established that the Protocol (in force) on Exemptions from the Free Trade Regime to the Agreement between the Government of the Republic of Kazakhstan and the Government of Ukraine on Free Trade, dated September 17, 1994, to which Kazakhstan had consented through signature, could not be prioritized over Article 331(2) of the Customs Code of Kazakhstan[4], due to the Protocol's lack of ratification[5]. Consequently, the court's failure to apply the norms of the treaty in force for Kazakhstan constitutes a breach of the aforementioned provisions of the 1969 VCLT. In light of these considerations, this study aims to develop recommendations for amending and supplementing Kazakhstan's legislation to address the research problem outlined above.

Materials and methods

This research employed a comprehensive set of sources, consisting of doctrinal instruments, judicial practice, and legal acts related to domestic application of treaties. The doctrine analyzed in this study is based on the works of authors such as Hans Kelsen, Oliver Dörr, Kirsten Schmalenbach, Mark Villiger, Anthony Aust, Anthony O'Brien-Tomond, I.I. Lukashuk, B.I. Osminin, S.Yu. Marochkin, N.I. Matuzov, and A.N. Talalaev. The study also incorporates domestic jurisprudence related to the application of treaty norms, obtained from the BestProfi information system database. The legal acts used for comparative legal analysis include the constitutional provisions of Kazakhstan, Georgia, Russia, and the Netherlands, which establish the status and role of treaties within the national legal frameworks of these states.

In conducting this research and pursuing its objectives, we utilized an extensive set of specialized legal methods. The comparative legal method proved useful in examining constitutional provisions on the primacy of treaties in states that adhere to either monistic or mixed approaches. Furthermore, the formal-legal method was applied to analyze normative resolutions issued by Kazakhstan's Supreme Court and Constitutional Court (Council). Legal hermeneutics also played a crucial role in determining the true meanings of legal terms, achieved through interpretation based on both legal acts and scholarly literature.

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[2] The second sentence of paragraph 2 of the Resolution of the Constitutional Council of the Republic of Kazakhstan dated May 18, 2006, No. 2, "On the official interpretation of subparagraph 7 of Article 54 of the Constitution of the Republic of Kazakhstan" states: "Treaties, the binding nature of which for Kazakhstan is established by normative legal acts on accession to treaties adopted by the highest representative body of the Republic exercising legislative functions (the Supreme Council, the Parliament of the Republic of Kazakhstan) and by decrees of the President of the Republic of Kazakhstan having the force of law, are equated with treaties ratified by the Republic of Kazakhstan" // URL: https://adilet.zan.kz/rus/docs/S060000002_ (date of reference: 1.01. 2025).

[3] The Resolution of the Aktobe Regional Court in case No. 2A-9462009 dated August 27, 2009.

[4] Paragraph 2 of Article 331 of the Customs Code of the Republic of Kazakhstan dated April 5, 2003, No. 401 (repealed by the Law of the Republic of Kazakhstan dated June 30, 2010, No. 298-IV) states: "Goods imported into the customs territory of the Republic of Kazakhstan and originating from states forming a customs union or a free trade area with the Republic of Kazakhstan, as well as goods exported from the customs territory of the Republic of Kazakhstan to these states and originating from the Republic of Kazakhstan, shall be exempt from customs duties" // URL: https://adilet.zan.kz/rus/docs/K030000401_ (date of reference: 1.01. 2025).

[5] Ibid., 3.

Discussion and results

1. The Nature of the Constitutional Clause on the Priority of Treaties

When treaties become part of the applicable law and operate within the national legal framework alongside state laws, there arises a necessity for legal regulation regarding which will prevail in the event of a conflict between the provisions of a treaty and domestic law on the same issue. This represents one of the characteristics of the legal systems of countries adhering to monistic or mixed approaches, which is typically regulated within a constitutional provision in one of the following forms of monism: the primacy of international law, the primacy of national law, and partial primacy of both national and international law. In this regard, Hans Kelsen argues that the choice of one form of monism, from a legal perspective, is insignificant, while from a political standpoint, the choice may be important as it relates to the ideology of sovereignty [1, p. 447]. However, it is important to note that the practices of states in selecting one form of monism vary significantly.

From the perspective of the logic of the 1969 VCLT, one might conclude that the primacy lies with a treaty in force for a state. The legal basis for this form of monism stems from Article 27 of the 1969 VCLT, which establishes a prohibition against invoking national law as a justification for a state's failure to comply with a treaty. According to Anthony O'Brien-Tomond, Kelsen's concept of the primacy of international law represents the most radical form of monism in international law and reflects the idea of global democracy [2, p. 349]. It is perhaps for this reason that states limit themselves to establishing the primacy of only one source of international law – treaties. Today, the primacy of treaties over national law is upheld by constitutional provisions in several countries that adhere to monistic or mixed approaches, such as Kazakhstan, Russia, the Netherlands, Colombia, and others.

However, the primacy of treaties does not imply an exclusive superiority of applicable treaties over the entire legal system of a particular state, as states may interpret the priority of treaties in a way that excludes their application to the Fundamental Law (Constitution). For instance, on July 10, 2008, the Supreme Court of the Republic of Kazakhstan ruled that in the event of a conflict between constitutional provisions and treaties of the Republic of Kazakhstan, the priority in application belongs to constitutional norms[6].

2. Definition of the Concept of "Priority" Arising from the 1995 Constitution of Kazakhstan

The current wording of the first sentence of paragraph 3, Article 4 of the 1995 Constitution of Kazakhstan, which includes the term "priority", states that "treaties ratified by the Republic have priority over its laws"[7]. Special attention should be drawn to the highlighted term, as its content addresses most questions related to the types of circumstances under which treaties are applied domestically. In this regard, in 2000, the Constitutional Council, in its ruling, clarified the definition of the term "priority", establishing that the priority of ratified treaties over state laws implies a situational superiority of the provisions of such treaties in cases of conflict with the provisions of laws[8]. In turn, a legal conflict is generally understood as a disagreement or contradiction between legal norms that govern the same or related legal relations [3, с. 225].

Based on the explanation provided by the Constitutional Council, it is understood that the first sentence of Paragraph 3 of Article 4 of the 1995 Constitution of Kazakhstan can function solely under a specific set of circumstances, which also represent one type of condition for the domestic application of treaties. At first glance, one might assume that the specified provision pertains only to cases involving contradictions between the provisions of a ratified treaty and domestic law. However, it is also important to consider cases concerning the existence of relevant norms for regulating social relations within a ratified treaty, in the absence of such norms in national law. For instance, the existing bilateral treaties on the avoidance of double taxation and the prevention of tax evasion concerning income and capital taxes, of which Kazakhstan has 53[9], primarily regulate provisions that, by their nature, do not exist and

[6] *Normative Resolution of the Supreme Court of the Republic of Kazakhstan "On the Application of the Norms of Treaties of the Republic of Kazakhstan" dated July 10, 2008, No. 1 // URL: https://adilet.zan.kz/rus/docs/P08000001S_ (date of reference: 1.01. 2025).*

[7] *Ibid., 1.*

[8] *Paragraph 3 of Section 2 of the Motivational Part of the Constitutional Council of the Republic of Kazakhstan's Resolution "On the Official Interpretation of Paragraph 3 of Article 4 of the Constitution of the Republic of Kazakhstan" dated October 11, 2000, No. 18/2. // URL: https://adilet.zan.kz/rus/docs/S000000018_ (date of reference: 1.01. 2025).*

[9] *State Revenue Committee of Kazakhstan. Conventions on the Avoidance of Double Taxation and the Prevention of Tax Evasion concerning Income and Capital Taxes. // URL: https://www.gov.kz/memleket/entities/kgd/press/article/details/1574?lang=ru (date of reference: 1.01. 2025).*

cannot, in principle, be included in the laws of the state. The clarification regarding the nature of the term "priority" in the context of the relationship between national law and treaties of Kazakhstan enables us to assert that the norms of ratified treaties take precedence or apply in lieu of national law when, firstly, there is a contradiction between the provisions of a ratified treaty and domestic law on the same issue, and secondly, the relevant norm is absent from domestic law but is present in the ratified treaty.

3. Violation of Articles 26 and 27 of the 1969 Vienna Convention on the Law of Treaties

The issue at hand has its roots in the era of the first Constitution of independent Kazakhstan. Specifically, Article 3 of the Constitution of Kazakhstan, adopted by the Supreme Council of the Republic of Kazakhstan on January 28, 1993 (hereinafter referred to as the 1993 Constitution of Kazakhstan), limited the preferential force of international legal acts over state laws solely to the domain of human rights[10]. In other words, the 1993 Constitution of Kazakhstan prioritized treaties and decisions of international organizations regarding human rights and freedoms, irrespective of the mean in which consent was expressed, whereas the current Constitution of Kazakhstan, adopted in 1995, grants primacy to ratified[11] treaties and those equivalent[12] to them. Consequently, it is reasonable to argue that, regarding the content of Article 3 of the 1993 Constitution of Kazakhstan, when a court or an executive authority addresses a specific dispute and encounters a conflict between the relevant provisions of national law and an applicable treaty that does not pertain to human rights and freedoms, the court or executive authority would have been compelled to disregard and ignore the provisions of the applicable treaty. Such a situation would constitute a violation of the principle of pacta sunt servanda, as enshrined in Article 26 of the 1969 VCLT, which states that "every treaty in force is binding upon the parties to it and must be performed by them in good faith"[13]. It is evident that there has not been a specific case in which the provisions of an applicable treaty were ignored under the aforementioned circumstances in the context of Article 3 of the 1993 Constitution of Kazakhstan, as the first indications of any references by courts to international legal instruments began to emerge only in 2008[14]. This can be justifiably explained by the adoption of the Supreme Court's normative resolution on July 10, 2008, No. 1, "On the Application of the Norms of Treaties of the Republic of Kazakhstan".

The change in the legal basis for granting priority to international human rights treaties (Article 3 of the 1993 Constitution of Kazakhstan) to the mean of expressing consent, such as ratification (first sentence of Paragraph 3 of Article 4 of the 1995 Constitution of Kazakhstan), did not resolve the existing issue and, rather, led to a real precedent whose outcome violated several articles of the 1969 VCLT. In the State Institution "Customs Control Department for the Aktobe Region" versus LLP "Brig"[15] related to the settlement of debt and penalties on import duties for importing malt beer from Ukraine by LLP "Brig", the court rejected the appeal by the customs authority, having established that the enforcement of the current Protocol on Exemptions from the Free Trade Regime as part of the Agreement between the Government of the Republic of Kazakhstan and the Government of Ukraine on Free Trade dated September 17, 1994, by officials of the Aktobe Department of Customs Control, was illegal due to its lack of ratification, per the first sentence of Paragraph 3 of Article 4 of the 1995 Constitution of Kazakhstan. The noted Protocol, being a treaty under Article 2 of the 1969 VCLT, stipulates that "the protocol is an integral part of the Agreement and enters into force simultaneously with the said Agreement"[16] which is indeed what occurred following the signing of the Protocol and the entry into force of the main Agreement. Consequently, the Protocol

[10] *Article 3 of the Constitution of the Republic of Kazakhstan, adopted by the Supreme Council of the Republic of Kazakhstan on January 28, 1993, states: "International legal acts on human and civil rights and freedoms recognized by the Republic of Kazakhstan take precedence over its national laws within the territory of the Republic" // URL: https://adilet.zan.kz/rus/docs/K930001000_ (date of reference: 1.01. 2025).*

[11] *Ibid., 1.*

[12] *Ibid., 2.*

[13] *Article 26 of the Vienna Convention on the Law of Treaties, adopted on May 23, 1969, states: "Every treaty in force is binding upon the parties to it and must be performed by them in good faith" // URL: https://www.un.org/ru/documents/decl_conv/conventions/law_treaties.shtml (date of reference: 1.01. 2025).*

[14] *IS BestProfi. Judicial practice. // URL: https://bestprofi.com/ (date of reference: 1.01. 2025).*

[15] *Ibid., 3.*

[16] *Paragraph 1, Article 3 of the Protocol on Exemptions from the Free Trade Regime to the Agreement between the Government of the Republic of Kazakhstan and the Government of Ukraine on Free Trade dated September 17, 1994 // URL: https://online.zakon.kz/Document/?doc_id=1017403&pos=3;-108#pos=3;-108 (date of reference: 1.01. 2025).*

became binding on Kazakhstan from both the perspective of national legislation[17] and the 1969 VCLT[18]. Unfortunately, the Court, in violation of international law and illegitimately[19] under Paragraph 3 of Article 4 of the 1995 Constitution of Kazakhstan, deemed that the Protocol, due to a conflict with Paragraph 2 of Article 331 of the Customs Code of Kazakhstan[20], could not take priority over it and therefore could not be applied in the resolution of the dispute due to its lack of ratification[21]. The customs authority's inability to apply the provisions of a valid treaty represents a violation by the state of Articles 26 and 27 of the 1969 VCLT, which establish the principle of pacta sunt servanda and prohibit recourse to provisions of domestic law as justification for a state's failure to perform its obligations under a treaty.

In turn, interpreting the content of Article 26 of the 1969 VCLT – the principle of pacta sunt servanda – it should be understood that regarding both international and domestic public relations, any treaty in force is binding on its participants and must be performed in good faith, regardless of the mean in which consent was expressed. In other words, all treaties of Kazakhstan should have equal legal force, irrespective of the mean used to express consent to their binding nature. Accordingly, a treaty for which the state's consent to be bound was expressed through accession, signature, acceptance, ratification, or any other means must have a similar legal effect as that of a ratified treaty within the context of the 1995 Constitution of Kazakhstan. Also, it is important to highlight that pacta sunt servanda is to be applied without any exceptions regarding all treaties, including their annexes and amendments [4, p. 365].

Regarding the aforementioned understanding of the nature of international obligations, I.I. Lukashuk rightly notes that "a state must structure its legal system in such a way as to ensure the fulfillment of international obligations" [5, c. 266]. A.N. Talalaev, like most specialists in international law, believes that the 1969 VCLT does not address the procedures for fulfilling international obligations, as their implementation is an internal matter for each sovereign state [6, c. 64]. Nevertheless, the author argues that when implementing the norms of treaties, the primary indicator of compliance is the outcome, which should be directly covered by the fulfillment of the treaty [6, c. 64].

Holding a similar position, B.I. Osminin notes that "the circumstance that some treaties are given priority in application over national laws and regulations, while others do not enjoy such priority, is not of fundamental importance from the perspective of international law" [7, c. 338]. Further elaborating on his position, B.I. Osminin asserts that "all treaties in force are equally binding on the state" [7, c. 338]. The author also believes that "the priority application of the rules of a treaty should not depend on the level at which the decision to consent to the treaty's binding nature was made" [7, c. 350].

Regarding the illegitimacy of prioritizing only ratified treaties, a number of authors hold an opposing view. For instance, S.Yu. Marochkin believes that "courts cannot justify their decisions based on international intergovernmental or interagency agreements to the detriment of federal law" [8, c. 27]. Furthermore, according to V.M. Shumilov, the provisions of interagency agreements do not possess and should not possess priority over domestic law norms [7, c. 351]. Certainly, the aforementioned does not imply that intergovernmental and interagency treaties cannot be ratified. Such a position arises from the widespread practice of governments entering into memoranda of understanding (MOUs), which, under the 1969 VCLT, are not considered as treaties since MOUs are not governed by international law. Anthony Aust defines a "memorandum of understanding" (MOU) as "an instrument concluded between states which they do not intend to be governed by international law (or any other law) and, consequently, is not legally binding" [9, p. 32]. In this sense, if the provision of an MOU contradicts a provision of national law, the MOU will not prevail over the national law provision due to the absence of international obligations in the text of the agreement.

[17] *In the context of this paragraph, the main treaty – the Agreement between the Government of the Republic of Kazakhstan and the Government of Ukraine on Free Trade dated September 17, 1994 – was ratified by Decree No. 2216 of the President of the Republic of Kazakhstan on April 20, 1995, and entered into force following an exchange of notes on October 19, 1998, in accordance with Article 13 of the Agreement and Article 23 of the Law of the Republic of Kazakhstan No. 54 dated May 30, 2005, "On Treaties of the Republic of Kazakhstan".*

[18] *See Paragraph 1(a) of Article 12, Paragraph 1(a) of Article 14, and Article 26 of the 1969 Vienna Convention on the Law of Treaties // URL: https://www.un.org/ru/documents/decl_conv/conventions/law_treaties.shtml (date of reference: 1.01. 2025).*

[19] *In the context of this paragraph, the main treaty – the Agreement between the Government of the Republic of Kazakhstan and the Government of Ukraine on Free Trade dated September 17, 1994 – was ratified by Decree No. 2216 of the President of the Republic of Kazakhstan on April 20, 1995. This means that both the Agreement itself and the Protocol, which is an integral part of the Agreement, took precedence over national laws, in accordance with Article 3 of the Protocol.*

[20] *Ibid., 4.*

[21] *Ibid., 3.*

It should also be acknowledged that this tendency would be unsuccessful when a state appears before international judicial bodies, as, according to Article 27 of the 1969 VCLT, a state may not invoke its national law as justification for failing to fulfill a treaty. Consequently, this could discredit the state's image and authority before the international community in terms of its understanding of the nature of international obligations.

It is worth recalling that, in addition to the principle of pacta sunt servanda, the case of the State Institution "Customs Control Department for the Aktobe Region" versus LLP "Brig" was also distinguished by the state's violation of Article 27 of the 1969 VCLT. This provision prohibits a state party from invoking its domestic law as a justification for failing to fulfill its obligations under a treaty. As noted in the commentary on the 1969 VCLT by Oliver Dörr and Kirsten Schmalenbach, the primary purpose of Article 27 is to reaffirm the fundamental principle of pacta sunt servanda, under which treaties must be performed in good faith. Thus, Article 27 precludes the most common excuse for the non-performance of a treaty – that is, the inconsistency between its provisions and the state's domestic legislation [10, p. 453]. Consequently, the court's refusal to apply the treaty on the grounds of its non-ratification with a reference to national law is regarded as a violation of Article 27 of the 1969 VCLT.

4. Constitutional Clauses of States Following Monistic or Mixed Approaches Regarding the Primacy of Treaties

This part of the study will analyze the constitutions of countries that go beyond merely ratified treaties in determining what takes precedence when conflicts arise between the provisions of a treaty and domestic law on the same subject.

A review of the Constitution of Georgia indicates that its stance on the relationship between treaties and national law does not reflect the challenges found in domestic legislation. According to Article 4, Paragraph 5 of the Georgian Constitution, "treaties of Georgia that do not conflict with the Constitution or constitutional agreements shall hold superior legal authority over domestic legal acts"[22]. This provision implies that any treaty, as long as it does not contradict the Constitution and regardless of the mean of consent, has priority over national laws in the event of a conflict

The Russian Constitution follows a similar approach to that of Georgia regarding the priority of treaties. Article 15, Paragraph 4 of the Russian Constitution stipulates that "if a treaty of the Russian Federation establishes rules different from those provided by law, the rules of the treaty shall prevail"[23]. The content of this provision suggests that it de jure fulfills the principle of pacta sunt servanda by the state and does not impose any discrimination on the implementation of treaty obligations based on the specific mean of expressing consent to be bound by a treaty, such as ratification.

An intriguing formulation regarding the primacy of treaties over national laws, regardless of the method of expressing consent to be bound by a treaty, is established in the Constitution of the Netherlands. Article 94 of the Dutch Constitution states that "existing legal provisions shall not be applied if their application contradicts the generally applicable provisions of treaties and acts of international organizations"[24]. In other words, this provision directly indicates the non-application of national laws that conflict with treaties of the Netherlands.

5. The State Approach to Addressing the Priority of Non-Ratified Treaties Concluded Before the Adoption of the 1995 Constitution of Kazakhstan and/or Those Not Stipulating Ratification as a Condition for Entry into Force

The emergence of a different type of problem regarding the preferential force of non-ratified treaties concluded before the adoption of the 1995 Constitution of Kazakhstan, and that do not stipulate ratification as a condition for their entry into force, was quite expected. This pertains to the 1961 Vienna Convention on Diplomatic Relations, the 1963 Vienna Convention on Consular Relations, the 1969 Vienna Convention on the Law of Treaties, and others, for which Kazakhstan expressed consent through accession. On September 11, 2000, the Prime Minister of Kazakhstan addressed the Constitutional Council regarding this issue[25]. Addi-

[22] *Article 4, Paragraph 5 of the Constitution of the Republic of Georgia (Parliament of the Republic of Georgia, 24/08/1995) // URL: https://matsne.gov.ge/ru/document/view/30346?publication=36 (date of reference: 1.01. 2025).*

[23] *Article 15, Paragraph 4 of the Constitution of the Russian Federation (adopted by nationwide voting on December 12, 1993, with amendments approved during the nationwide vote on July 1, 2020) // URL: http://duma.gov.ru/legislative/documents/constitution/ (date of reference: 1.01. 2025).*

[24] *Article 94 of the Constitution of the Kingdom of the Netherlands, 2018 // URL: https://www.government.nl/documents/reports/2019/02/28/the-constitution-of-the-kingdom-of-the-netherlands (date of reference: 1.01. 2025).*

[25] *Resolution of the Constitutional Council of the Republic of Kazakhstan "On the Official Interpretation of Paragraph 3 of Article*

tionally, arising from the context of the aforementioned issue, a group of deputies from the Parliament of Kazakhstan raised another question on April 26, 2006: "Are there differences between the law on the ratification of a treaty and the law on accession to a treaty subject to ratification"[26]?

When analyzing the Resolutions of the Constitutional Council of Kazakhstan dated October 11, 2000, "On the Official Interpretation of Paragraph 3 of Article 4 of the Constitution of the Republic of Kazakhstan", and May 18, 2006, "On the Official Interpretation of Subparagraph 7) of Article 54 of the Constitution of the Republic of Kazakhstan", the concept of "non-ratified treaties equated to ratified treaties" emerged. It can be observed that that a broader scope in addressing the aforementioned issue is established in Paragraph 2 of the Constitutional Council's Resolution of May 18, 2006, which states that "treaties, the binding nature of which for Kazakhstan is established by normative legal acts on accession to treaties adopted by the highest representative body of the Republic exercising legislative functions (the Supreme Council, the Parliament of the Republic of Kazakhstan) and by decrees of the President of the Republic of Kazakhstan that have the force of law, are equated to the treaties ratified by the Republic of Kazakhstan"[27].

Conclusion

In concluding the analysis of the issue regarding the prioritization of exclusively ratified and equated treaties within the legislation of Kazakhstan, the following recommendations are proposed:

- The term "ratified" should be removed from the wording of the first sentence of Paragraph 3 of Article 4 of the 1995 Constitution of Kazakhstan, and it should be revised as follows to avoid violating Articles 26 and 27 of the 1969 VCLT: "Treaties of the Republic of Kazakhstan shall have priority over its laws".

- References to specific mean of expressing the state's consent to be bound by a treaty, such as ratification, should be excluded from the formulations of other legislative provisions derived from the first sentence of Paragraph 3 of Article 4 of the 1995 Constitution of Kazakhstan. This adjustment is necessary for accurately determining the preferential status of treaties over national laws.

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[26] Resolution of the Constitutional Council of the Republic of Kazakhstan "On the Official Interpretation of Subparagraph 7) of Article 54 of the Constitution of the Republic of Kazakhstan" dated May 18, 2006, No. 2. // URL: https://adilet.zan.kz/rus/docs/S060000002_ (date of reference: 1.01. 2025).

[27] Ibid., 2.

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