

DISTINCTIVE ASPECTS OF THE PRINCIPLES GOVERNING THE RECOGNITION AND ENFORCEMENT OF COURT DECISIONS BETWEEN STATES

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Abstract:

This study examines the distinctive aspects of the principles governing the recognition and enforcement of foreign court decisions in international law. It highlights the imperative nature of jus cogens norms, such as the principles of sovereign equality and international cooperation, which require state consent before foreign judgments can be enforced within their territories. The principle of reciprocity ensures cooperation in the absence of bilateral agreements, while sectoral principles like the interrelation of judicial processes and res judicata prevent duplication of cases and ensure the finality of decisions. The study further explores how these principles are embedded in international treaties and national legal frameworks, emphasizing their role in balancing state sovereignty with legal cooperation.

Keywords: Recognition of foreign judgments, enforcement, jus cogens, sovereign equality, international cooperation, reciprocity, judicial interrelation, res judicata, state sovereignty, legal certainty, jurisdiction, treaty obligations, comitas gentium, international judicial practice, mutual assistance, national legal systems.

Introduction

When discussing principles within the framework of international law, it is essential to first seek their legal foundations in international treaties and customary international law norms. Additionally, it must be taken into account that there is no final or official list of international law principles. Therefore,



identifying and analyzing them primarily requires referring to existing international legal norms, international judicial practice, and doctrines of international law. In particular, the existence of official or unofficial interpretations of international law principles holds special significance from the perspective of their application in national law, as national legal systems rely on international legal principles and norms, integrating the resulting provisions into their legislation.

Methods. This article employs historical, logical, and comparative-legal methods to analyze the historical development of principles related to the recognition and enforcement of foreign court decisions, scholars' opinions, their application in international instruments and judicial practice, and their legal nature.

Analysis and Discussion

International law principles are understood as universal, imperative international legal standards that reflect the logic of international law, correspond to the objective realities of the development of international legal relations, and constitute the legal values forming the international legal order. It is important to emphasize that a key characteristic of public international law principles in international relations is their imperative nature. The defining features of international law principles include, first, their obligatory nature for all participants in regulating public relations, as seen in the UN Charter and multilateral treaties. Second, these principles define the object of international cooperation, reflecting the legal values determined by the objective needs of participants in international relations.

The 10 universally recognized principles of international law are enshrined in the Charter of the United Nations adopted in 1945[1], the Declaration on Principles of International Law of 1970[2], the Final Act of the Conference on Security and Cooperation in Europe (Helsinki) of 1975[3], and several other international documents. The establishment of the United Nations (hereinafter – UN) in 1945, the adoption of the Universal Declaration of Human Rights on December 10, 1948, as well as the ratification of the International Covenant on Civil[4] and Political Rights and other international treaties adopted in 1966 by various states[5], significantly contributed to the development of international legal norms.

The Principle of Sovereign Equality of States. According to Article 2, Paragraph 1 of the UN Charter, states must base their international relations on the principle of “sovereign equality” [1]. Similar provisions are established in Article 17 of the Constitution of the Republic of Uzbekistan, which states that “*Uzbekistan’s foreign policy is based on the sovereign equality of states... as well as other universally recognized principles and norms of international law*”[6].

The essence of this principle lies in the equal rights of all states and the obligation not to interfere in each other’s internal affairs. In international law, this principle is considered a “*jus cogens*” imperative norm. This means that any interference in the sovereignty of a state constitutes a violation of imperative norms of international law. In particular, the recognition and enforcement of foreign court decisions may affect the sovereign rights of a state. The voluntary nature of recognizing and enforcing foreign court decisions serves as an important mechanism for protecting state sovereignty. Every state has the right to determine the conditions and procedures for recognizing and enforcing foreign court decisions based on its national legislation. This ensures the state’s ability to protect its interests.

According to I. Blunckling, “no state is obliged to permit the exercise of any governmental authority (including judicial authority) of another state within its territory without its consent”[7]. French jurist H. Batiffol emphasizes that “a state’s apparatus operates solely based on orders originating from the respective state.”[8] Derived from the principle of sovereign equality of states, this means that the enforcement of a foreign state’s authoritative decisions can only be carried out with the consent of the respective state. Otherwise, even if there are no obstacles to enforcing such decisions, they may still remain unenforced.

U.S. judge X. Gray, emphasizing the territoriality of sovereignty, states that no law, by virtue of its legal force, applies beyond the borders of the sovereignty from which its authority originates[9]. In international relations, the principle of the sovereign equality of states is aimed at ensuring compliance with the rule of territorial supremacy. One manifestation of this principle is that a state has no right to impose its will on another state or interfere in any other way in its internal affairs (state sovereignty).

If we look at history, in the 17th century, court decisions were issued by the head of state (the king), and any interference in this matter could be considered an intrusion into the king's personal powers. This, in turn, implied a violation of a



state's internal affairs, i.e., its sovereignty. Based on this approach, if we focus on the issue of sovereignty:

First, the administration of justice is an inseparable component of a state's territorial supremacy (sovereignty).

Second, according to the principle of sovereign equality of states, a state is not obliged to recognize foreign court decisions, except in cases where obligations have been assumed within the framework of international treaties[10]. For the administration of justice, a state must possess territorial supremacy; otherwise, a court decision would, by itself, have no legal effect beyond the state that issued it in relation to the defendant or the victim. To prevent the limitation of territorial supremacy in recognizing interstate court decisions, there must be mutual agreements between sovereign and equal states.

In our opinion, regardless of which foreign state's court handles civil, administrative, or criminal cases, the administration of justice has always been the function of any state. From this, it follows that the essence and subjective composition of a case resolved by a foreign court do not in any way affect the legal nature of the court decision-it always remains a legal act of the state that issued it.

Between the 17th and 20th centuries, the development of international relations among states was influenced by changes in scholars' views on sovereignty. As a result, it was emphasized that states should grant each other privileges in judicial cooperation and mutual relations. This implies that international treaties should determine the procedure and characteristics of granting such privileges in the field of mutual recognition and enforcement of foreign court decisions. This is because the conclusion of treaties between states and the establishment of obligations therein were seen as a guarantee of the fulfillment of commitments related to recognizing and enforcing court decisions issued in one state while preserving state sovereignty. Consequently, this contributed to the development of international legal cooperation in this area.

The principle of international cooperation of states. Increasing attention is being paid worldwide to ensuring human rights and adhering to human rights standards in the recognition of foreign court decisions in civil, economic, and criminal cases. As a general rule, court decisions issued by each state's own courts must be enforced, as the state, based on its sovereignty, exercises the relevant coercive function. The obligation of states to cooperate with one another is

established in Article 1, Paragraph 3 of the UN Charter and in the Declaration on Principles of International Law[2].

According to the G.Matkarimova, “respecting the principle of cooperation among states is one of the highest values in international law” [11]. X.Tursunov emphasizes that “failure to properly execute a foreign state’s judicial request in civil, family, criminal, and economic matters leads to a breach of international legal obligations or a violation of the principles of interstate cooperation” [12]. In her research, P.Evseeva states that “the achievement of justice in the administration of justice and the respect for human rights are initially ensured by the domestic legislation of a particular state, and later, cooperation takes place within the framework of international treaties”[13].

Within the framework of international treaties on the recognition and enforcement of foreign court decisions, such provisions can be found in Article 5 of the Agreement between the Republic of Uzbekistan and the Republic of Kazakhstan on Legal assistance and legal relations in civil, family, and criminal cases, signed on June 2, 1997, as well as in Article 364 of the Civil Procedure Code of the Republic of Uzbekistan and Article 248 of the Economic Procedure Code of the Republic of Uzbekistan.

The Principle of Interrelation of Judicial Processes. In the context of court proceedings, the terms “interaction”, “implementation of interaction” and “causal interrelation” are used to describe the mutual influence among the subjects of the judicial process. The key aspect of this principle is that the procedural rights of disputing parties exist in complete interrelation. Moreover, it directly affects the process of comprehensive examination of cases by competent courts, the reliance on evidence, and the adoption of lawful decisions. The main aspects of this principle include: each judicial instance conducting proceedings within its jurisdiction; higher courts having the authority to review and verify the legality and validity of decisions made by lower courts; uniform interpretation of legal norms; and the prevention of repetitive procedural actions.

Therefore, in the process of recognizing and enforcing foreign court decisions, this principle manifests as the foundation of procedural rights for the parties in judicial proceedings. This principle is also reflected in international legal instruments. Specifically, Article 22 of the Minsk Convention[14] and Article 24 of the Chisinau Convention establish that if a case has been initiated between the

same parties, concerning the same subject matter and grounds, the court that initiated the proceedings later must terminate them[15].

The principle of *res judicata* is a general principle known in international law and national legal systems of states. The principle of *res judicata* implies the clarity and unambiguity of legal provisions on one hand, and the finality of court decisions on the other. This principle guarantees the finality of legal status in regulating legal relations between parties. P.Janig and A.Reinisch define the concept of “*res judicata*” as follows: “In the public interest, court proceedings must be terminated, and no one should be brought to court twice on the same grounds”[16].

T.Tsepkova and M.Borisov apply the concept of “*res judicata*” in both narrow and broad senses. “In the narrow sense - if a dispute has been resolved by the court and the decision has entered into legal force, it eliminates uncertainty between the parties. In the broad sense - it prohibits the reconsideration of the same dispute in resolving the court case and when the court decision enters into legal force, prohibits appeals and reconsideration in the usual manner. It also establishes the mandatory nature of the execution of court decisions”[17].

This principle is established as a rule prohibiting the reconsideration of decisions made by one state's court on their merits in implementing interstate cooperation on recognition and enforcement of foreign court decisions. Within the framework of international documents, this is specified in Article 54, paragraph 2 of the Minsk Convention, and Article 57, paragraph 2 of the Chisinau Convention. Also, within the framework of national legislation, it is recorded in Part 4 of Article 369 of the Civil Procedure Code and Part 4 of Article 254 of the Economic Procedure Code.

The Principle of Reciprocity. Although this principle is not established in the UN Charter or international treaties, it holds significance in the development of interstate relations. The principle of reciprocity is primarily based on the concept of the legal equality of subjects of international law. In international law, the notion of “reciprocity” is understood as an approach applied in the absence of an international treaty regulating relations between states involving a foreign person. In other words, it implies that rights recognized in one state should be recognized in the same manner in another state.

I. Lukashuk stated that “international comity (*comitas gentium*) consists of rules accepted in practice but lacking legal force”[18]. The International Court of

Justice has noted that international comity should be taken into account but must be distinguished from legal obligations. William S. Dodge emphasizes that the doctrine of international comity (*comitas gentium*) is not only theoretical but also plays a role in regulating existing relationships. He points out that courts of one state may apply the laws of another state based on the principle of comity [19].

According to D. Story, the limits of applying the principle of comity should be determined by the state itself. While applying it may be appropriate, it is not mandatory [20].

If we consider the role of the “principle of reciprocity” in national legislative norms of states, it is specifically mentioned in Article 592 of the Criminal Procedure Code of the Republic of Uzbekistan [21].

Such approaches allow for mutual legal assistance in recognizing and enforcing foreign court decisions between states, even in the absence of an international treaty. At the same time, they contribute to ensuring interstate international legal cooperation. In our view, the doctrine of international comity (*comitas gentium*) has served as the basis for the formation of the principle of reciprocity as a means of implementing international legal cooperation in the absence of a treaty between states on the recognition and enforcement of foreign court decisions. The main elements of the principle of reciprocity are as follows: 1) It creates the possibility of recognizing and enforcing the decisions of one state's courts in the territory of another state; 2) States apply this principle based on their mutual interests; 3) It is used in establishing equal legal relations.

The historical foundation of the principle of reciprocity today can be said to have been created based on the doctrine of international comity (*comitas gentium*). Furthermore, by its nature, this principle does not have an imperative character but is instead based on voluntariness.

Conclusion

The specific characteristics of the principles noted above demonstrate that the *jus cogens* peremptory norms of international law (the principle of sovereign equality of states and the principle of international cooperation) establish that the recognition and enforcement of foreign court decisions, since they are carried out within the territory of another state, can only take place after obtaining the consent of the competent authority of the recognizing state. In the absence of mutual treaties regulating a specific area between states, the principle of reciprocity

serves to ensure international legal cooperation between states in matters of recognition and enforcement of court decisions. Sectoral principles (interconnection of judicial proceedings and res judicata) help prevent the duplication of decisions in cases with the same subject matter issued by foreign courts, as well as ensure the finality of decisions and determine the legal status of the disputing parties.

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