Фроловский Сергей Геннадьевич
Frolovskiy S.G.
Научный руководитель: доцент,к.ю.н.,
Розенцвайг Анна Игоревна
Supervisor: Associate Professor, PhD in Law,
Rosenzweig A.I.
Самарский университет, студент 2 курса магистратуры
Samara University, a second year student magister

"Soft law" as a source of international law and assessment of the possibility of its application in the national system of legislation

Absence of validity allows to combine diverse international non-legal (recommendatory and political) norms within the concept of «soft law». There is an opinion that "soft law" can be used only in international system as the result of discussion between the states. The research shows that it can be used in national legislation also.

Keywords: «soft law», non-binding norms, international treaties, national law system, international law

Отсутствие юридической силы позволяет объединить в рамках термина «мягкое право» различные международные неправовые (рекомендательные, политические) нормы. Существует мнение, что «мягкое право» может быть применено только в международном праве как результат договоренности между государствами. Данное исследование показывает, что оно применимо и в национальной системе законодательства.

Ключевые слова: «Мягкое право», необязательные нормы, международные договоры, национальная правовая система, международное право

This research can be considered relevant because in the era of globalization relationships between states are becoming increasingly important. Of course these relationships should be regulated. In modern international law an international treaty is the main regulator. However, the realities dictate the need for a more dynamic and mobile regulator of public relations that can be "soft law". The purpose of the research is to limit the internal content of "soft law" and its attribute . Among the tasks that are assigned: 1) to learn the concepts of " soft right"; 2) make conclusions about the possibility of using this term ; 3) to analyze the possibility of application in the national system of law .

In the science of international law scholars have not come to a common understanding of the conseption "soft law". I.I. Lukashuk and George Gold offer to understand under the "soft law" as 1) norms of treaties that are vague in their content and do not give rise to specific obligations for states; 2) the norms contained in the resolutions of international bodies that are not legally binding . Most scientists who has described this concept used only one attribute, for example, K.A. Byakishev : "... the soft law norms usually use expressions like "take necessary measures ", " promote development or implementation ","strive for implementation "and so on. Such rules do not contain clear rights and obligations of states ... "

"Soft law " is distinguished in discourse from hard law only because there is no connection between " soft law " and the state . Opponents of the "soft law" concept declare that the existence of

a theory has no justification. French professor Weil reflects that a “ soft ” or “ hard ” norm by its nature does not cease to be legal. R.A. Kolodkin regards “soft law” as an attempt to deure both international relations and a number of rights and, accordingly, obligations under international law[301].

Analysis of the legislation of Russian Federation on the subject of attitudes to the acts of “soft law ” allows to conclude that : 1) Acts of “soft law” are taken into account in domestic practice. For example, paragraph 4 part 9 article 7 of the Federal Law “On Technical Regulation” dated December 27, 2002 No 184-FZ reads: “When assessing the degree (actual - note) of risk, the provisions of international standards, recommendations of international organizations of which Russian Federation is a participant” can be taken into account ; 2) Acts of "soft law" are taken into account in domestic practice when the country have conditions (economic, social capabilities of the state). Criminal Executive Code of Russia part 4 article 3 contains the following provision: “Recommendations (declarations) of international organizations on the enforcement of sentences and the treatment of convicts are implemented in the criminal-executive legislation of Russian Federation with the necessary economic and social opportunities ; 3) Soft law acts are strictly borrowed at the level of national legislation . For example, part 4 article 6 of the Federal Law of Russian Federation “About the Use of Atomic Energy” No 170-FZ of November 21, 1995 contains a provision according to which the norms and rules of the Russian Federation in the field of atomic energy use should be taken into account by the recommendations of international organizations in the field of atomic energy use .

To draw the conclusion, “soft law” can serve as a way to : bring the national legislation into conformity with the adopted acts of “soft law” and it is one of the methods of interpreting the provisions of domestic law by means of acts of “soft law”. “ Soft law” is one of the most effective ways to harmonize the legislation of states that would not violate the principle of non-interference in the internal affairs of a state and would contribute to a uniform interpretation[302]. Despite the lack of consensus among the scientists regarding the nature of the “soft law” action, we can conclude during the analysis of the Russian legal system that “soft law” seems to be possible to apply in national legislation.

[301] Kolodkin , R.A. Criticism of the concept of “soft law” / Soviet state and law.1985. № 12. Page 95-100.

[302] Khalafyan R. M. The concept of international "soft law" in the international legal doctrine // Eurasian Law Journal. 2012. No. 2. Page 35-38.