

Abstract

Spread of International Law into Decision-Making Practice of Domestic Authorities

In principle international law does not impose its subjects how to achieve compliance with its international legal obligations within their jurisdiction. However, for the effectiveness of international law in each country it is the approach of legislative, executive and judiciary authorities to international obligations that is vital. The thesis focuses mainly on the judiciary, while the issues of international law application by the domestic courts have not yet been at full length described.

Part One is an introduction which describes the subject of the work methodology and terminology used in its processing.

The first main aim of the thesis was to examine in detail legal rules for the application of international law as they result from both constitutional and ordinary law. These rules constitute a framework within which institutions applying international law deal with it. The third part of the thesis is mainly dedicated to fulfilment of the first main aim, it is entitled *The Current Application of International Law by National Authorities of the Independent Czech Republic and the Development of this Legislation*. But partially also the second part, entitled *Historical Development of Binding Force of International Law in Domestic Law and its Application in Czechoslovakia*, deals with this aim.

Part Two examines the relationship of international and domestic law during the existence of Czechoslovakia. It is divided into chapters according to the particular Czechoslovak constitutions, except the last chapter which covers the period after year 1989, although a new constitution was not formally adopted. The thesis describe the constitutional level, however, due to the lack of legal regulations on the relationship of international and domestic law on this level, it also describes the embodiment of this relationship on the level of ordinary laws, some of which still apply. Although the relationship of international and domestic law used to be a subject of lively interest in the doctrine of the so called First Republic, its particular views were fragmented. Decision-making practices of the Supreme Administrative Court and the Supreme Court varied. The Supreme Administrative Court used to systematically refuse to apply international treaties, unless there was an explicit instruction for application set forth in an act of the Parliament. On the other hand the Supreme Administrative Court was able to interpret relevant statutory authorization in a very flexible way. Although the Supreme Court proceeded mostly in the same manner there are not a few decisions that applied international treaties even without explicit statutory authorization. The doctrine was aware of the

inadequacy in regulation of the international and national law relationship. Therefore some proposals concerning the Constitution of the 9th May dealt with this relationship. Due to the communist takeover, however, those proposals were not accepted. On the constitutional level the relationship of international and national law was not dealt with until the adoption of the Constitutional Act No. 23/1991 Coll., which introduces CHARTER OF FUNDAMENTAL RIGHTS AND FREEDOMS as the constitutional law of the Federal Assembly of the Czech and Slovak Federal Republic. Even literature from the time of socialism was very inconsistent in view on the issue. The courts, except some totally isolated exceptions, applied international law only under a statutory reference to the priority application of international law.. After 1989, however, there was a significant opening to international law. That included openness on the outside through adopting international obligations enabling to monitor compliance with international commitments of the Czech Republic, especially in the field of human rights. However, there was also greater openness of domestic law to international law. On the constitutional level, it was mainly the incorporation of international treaties on human rights and fundamental freedoms, but also through the competences of the newly established Constitutional Court of the Czech and Slovak Federal Republic. This court then applied in its brief practice international law on a large scale.

Part Three of the thesis analyzes legislation of the independent Czech Republic. In addition to the analysis of the legislation itself, it features academic opinions, which are organized and compared, and presents author's views on individual problems. This part also features legislative processes that led to adoption of the legislation, based on analysis of Parliament prints (bills including reasoning) and records of Parliament debates. For comparison, Polish legal regulation is introduced. It is materially close to the Czech one and has had similar historical development in many respects.

Until 2002 the Constitution of the Czech Republic retained the concept of constitutional Act No. 23/1991 Coll. and incorporated into domestic legal order only international treaties on human rights and fundamental freedoms. This concept was a subject of justified criticism because it had left an unresolved relationship to other norms of international law and brought great difficulties in interpretation, including the question as to who is authorized to classify an international treaty as a human rights treaty. Gradually, however, the attitude of the Parliament began to change. After the initial rejection of the proposed amendment to the Constitution dealing with the relationship of international and national law, the Parliament adopted so called Euro-amendment of the Constitution. This amendment with effect from June 1, 2002 changed the Czech Constitution to the constitution of a standard democratic

state that is prepared to apply its international obligations also in domestic law. The Euro-amendment was inspired mainly by the Polish legal order, which differs from the Czech one rather in details. Some issues, however, the Polish legislature and courts sometimes solve differently from the Czech approach. The Euro-amendment explicitly established respect for obligations under international law as one of the fundamental constitutional principles. Though this provision is not an incorporation provision, on the other hand, it is important interpretative guidance. It furthermore extended the range of incorporated international treaties to all that have been promulgated, ratified by the Parliament and by which the Czech Republic is bound. The Constitution also allows certain powers of the Czech Republic to be transferred to an international organization or institution. The Euro-amendment established preventive review of constitutionality of international treaties and annulled the international treaties on human rights and fundamental freedoms as reference standards for abstract review of constitutionality. Most scholars welcomed the Euro-amendment, but some of them feared that due to the absence of transitional provisions the treaties on human rights and fundamental freedoms had ceased to be part of the Czech law.

There were also significant improvements in the publication of international treaties. The most significant one was mandatory publication in one of the authentic languages under international law. The thesis highlights some different aspects related to publication of international treaties and offers several alternative solutions for erroneously published or unpublished treaties with regard to whether it is a horizontal or vertical relationship. This is an aspect that is often overlooked and there is sought only one appropriate solution. By amending the Constitutional Court Act the powers of the Constitutional Court to decide on measures necessary to implement decision of an international court which is binding on the Czech Republic if they cannot be executed otherwise, became much more consistent with the terms of the Constitution than the restrictive original concept. The most significant change was the possibility of reopening of procedure in front of the Constitutional Court in a criminal case after the European Court of Human Rights decided that the Czech Republic has infringed the rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms.

Part Three is also dedicated to certain specific questions of international law and its influence upon the national legislation, namely to implementation of international sanctions and to provisional application of international treaties.

Part Four and Five then subsequently focus on the second main aim. They show and analyze how the constitutional and statutory framework are applied by the courts in practice.

Part Four, entitled *The Decisions of Courts on the Definition of the Range of International Law on Domestic Relations*, shows the decision-making practice of courts in terms of systemic issues of relationship between international and domestic law, including application of decisions of the European Court of Human Rights. This part is divided in accordance with areas in which the authorities applying law may experience contact with international law and it is partly linked to the division of the Part Three. As a result of this division some of the decisions are analyzed several times, because it is not uncommon that one decision deals with different aspects of the relationship of domestic and international law. In addition to the summarization of the cases and their generalization, where there are more decisions available, also individual decisions are analyzed. Some decisions are only described, without further analysis, especially where the decision rather only confirms the text of the law and consents with the views of the literature. The decision interpreting legal issues innovatively or in an unusual matter are subject to a more depth analysis. Special attention is paid to the Constitutional Court Judgement no. Pl. ÚS 36/01. The Constitutional Court irrespective of the relatively clear will of the Parliament and majority opinion of the scholars concluded that international treaties on human rights and fundamental freedoms were still the reference standard for the abstract and concrete review of constitutionality, since they were according to the Constitutional Court part of the constitutional order. The thesis describes various arguments of the Constitutional Court in detail, confronts them with the arguments of literature and formulates its own opinion. The thesis also analyzes the subsequent decision practice of the Constitutional Court, in which the Constitutional Court has not dealt with the arguments, and the subsequent decision practice of ordinary courts. In its decisions the Supreme Court in principle deferred to the Constitutional Court, but the Supreme Administrative Court has repeatedly stood up against this doctrine. With some exceptions it can be hardly ever spoken of settled case law in respect of the relationship between international and domestic law. Many issues were solved only once in the case law of courts, often in the decisions that were not published in publication collections, and thus cannot be excluded that in the future they could be solved differently. Many issues were dealt by the courts accidentally and often only obiter dictum, and without detailed justification addressing the problem. Some issues discussed in Part Three of the thesis have not been resolved by the courts yet at all.

Part Five, entitled *The Decision Practice of the Courts Applying International Law in Substance*, represents a random selection of different areas of international law applied by the courts. The presented cases show a rather exceptional situation in a way that international law was crucial for the assessment of controversial issues, where it was the field of international law that is usually not dealt with by the national courts, or of those decisions where the court applied international law in some other interesting way or when the court gave a comprehensive solution to a problem in relation to international obligations of the Czech Republic. It is thus an example of a possible role of international law in domestic law with regard to the matter at stake. Part Five is divided into sections based on areas of international law applied by the Czech courts.

Part Six is a conclusion that seeks to assess fulfilment or non-fulfilment of the assumptions listed in the introduction and fulfilment of the aims of the thesis.