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Ratios of International Law Rules and Internal Law of the Republic of Iraq

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Abstract

The present paper aimed to investigate the ratio and interaction of international and internal law in the Republic of Iraq. Theoretical questions of concept "international contracts" are raised from the point of view of their structure location of legal system of the Republic of Iraq. The mechanism of a ratio of international treaties and the national legislation is characterized in the law-enforcement aspect of the concept "right source". The international treaty of the Iraqi legislation has the status of the special ordinary law of national legal system corresponding to other acts of the internal law by rules of the competition and a collision of norms. The analysis of concrete provisions of the domestic legislation was performed according to the international law of the Republic of Iraq. According to author's point of view, the rapprochement of various legal systems and national legislations with rules of international law is now the major development.

Keywords: International law; Internal law; Theories of dualism; Theory of a monism; International treaty; Constitution of Iraq.

1. Introduction

The theory of the international law largely focuses on a question on a ratio of the international and internal law. Many scientific works are devoted to questions of the analysis of a ratio and cooperation of the international and internal law (Antúnez, 2018). Namely, Stein in Stein (1994) investigated the internationalization of central-eastern European constitutions and Henkin (1984) concluded that the courts should continue to give effect to developments in international law to which the United States is party, unless Congress is moved to reject them as domestic law in the United States. Muller in Muller (2013) considered the international and laws' perspective on each other. Furthermore, Ziegler (2016) tried to answer to some questions such as: How do EU law and international law interact? Is the relationship between EU law and international law different from the relationship between general international law and one of its specialized legal orders, for example the relationship between international law and the law of the sea?

Questions of a ratio of international law and the national right caused disagreements among scientists-foreign affairs and specialists and led to emergence of two scientific directions, namely the dualism and monism.

The dualistic concept recognizes that the international and national (interstate) law acts in various spheres representing themselves as independent legal systems which are not in the taxonomy (Ilinichna *et al.*, 2017). Supporters of the theory of dualism, led by the German lawyer Mr. Tripel and the Italian lawyer D. Antsilotti, consider that the international and internal law form two separate and independent legal systems between which there is no coincidence or unity as there are differences in sources and legal entities and also differences in formation of precepts of law and legal structure of each of systems (International law, 2005).

The theory of a monism is based on the unity of international law and the internal law and formation of the uniform legal system that is created on the basis of the hierarchy of sources of the right. The essence monism concepts consist in the recognition of the unity of both systems of the right at which the international and national (interstate) law are considered as parts uniform systems of the right (International law, 2016). By the way, in this article we tried to investigate the ratio and interaction of international and internal law in the Republic of Iraq.

2. Methods

The following methods were used while conducting the research: Comparative and legal, special and legal, and structural analysis method of the comparative jurisprudence.

3. Results and Discussion

As this theory was based on the unity and hierarchy, it divided supporters of the theory into several directions concerning hierarchy of sources of the right.

The general international law confirmed that the states had to observe the international obligations. In article 27 of the Vienna convention on the right of international treaties, it is said that "The participant cannot refer to provisions of the internal law as the justification for failure to follow the contract" (Law of Iraq No. 35, 2015) that is, the international treaty.

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The use of norms of the international public law to standards of the internal law is also reflected in a dispute on the warship "Alabama" between the United States of America and the Great Britain. On September 14, 1872, the international arbitration court of Geneva decided that though the English laws did not include the text allowing all neutral countries to allow civil courts to be at war during any war, this situation does not exempt from a duty not to help any party of the conflict as it is provided in rules of impartiality. The court noted that the state cannot rely on the domestic legislation to dispose of the international obligations.

Internal legal systems differ in regulation of the similar relations depending on provisions of Constitutions. Some of them give a priority to international treaties that is providing to the contract higher status, unlike the constitutional norms. And it involves need of amending provisions of the Constitution according to provisions of the contract. Situation or the amendment to the Constitution is made in the case of discrepancy to the existing contract for the state.

Therefore, the article 15 of the Constitution of the Russian Federation states: "The conventional principles and rules of international law and the international contracts of the Russian Federation are a component of its legal system. If the international treaty of the Russian Federation established other rules than those provided by the law, then rules of the international treaty are applied".

Article 106 of the Constitution of 1993 in Russia states that: "Adopted federal laws by the State Duma on questions are subject to the obligatory consideration in the Federation Council: d) Ratifications and denunciations of international treaties of the Russian Federation" (Myullerson, 1982).

According to the article 6 of section 2 of the Constitution of the USA of 1787: "The present Constitution and laws of the United States adopted in pursuance of it and all contracts which are signed or will be signed by the power of the United States, become the Supreme right of the country; and judges in each of states are obliged to follow this right whatever were provisions of the Constitution or laws of any of states" (Mahomed, 2012).

The constitution of Iraq of 2005 does not regulate any question about ratios of international treaties and the domestic legislation. It is presented in the paragraph 4 of article 61 that the ratification of international treaties and conventions is regulated by the law adopted by the majority in two thirds of voices of members of the House of Representatives (Pussyrmanov *et al.*, 2018).

The international treaty of Iraq does not come into the force until it is not published in an "official bulletin". The publication of provisions of the international treaty in the "official bulletin" is the necessary subsequent internal executive procedure in order that the contract got force of the domestic legislation.

The nature of interrelation between the international law and the domestic legislation specifically is not specified in the Constitution of Iraq. The international treaty of Iraq cannot be realized until the internal processes of law provided by the Law 35 of 2015 are adopted.

According to provisions of paragraphs 1 and 4 of article 61 of the Constitution of Iraq, the Law 35 of 2015 of Iraq "about signing of contracts" was adopted. It is divided into chapters and consists of 32 articles.

The law regulates the following questions: Definition of terms (chapter I); the coverage of the law (chapter II) says: "The present law is applied to the international treaties signed on behalf of the Republic of Iraq"; negotiations (chapter III); language of the contract (chapter IV), says that "The contract has to be published in Arabic, and the language accepted by the negotiation states"; bilateral contract (chapter V); multilateral contracts (chapter VI); ensuring implementation of the contract (chapter VII); exchange of instruments of ratification (chapter VII); ratification and accession (chapter IX); accession to multilateral contracts (chapter X); entry into force of the Contract (chapter XI); termination and suspension of the contract (chapter XII); amending in texts of the contract or in its certified copies (chapter XIII), procedural provisions (chapter XV); final provisions (chapter XVI) (Triepel, 1923).

As for procedural provisions, they are mentioned in chapter 15. The Ministry of Foreign Affairs, with the consent of Council of ministers, carries out powers on negotiating and signing of instruments of ratification or statements and also powers on exchange of instruments of ratification.

The Ministry of Foreign Affairs sends the draft agreement to the State advisory board for legal advice. The State advisory board considers appropriate public authorities' opinions about signing contracts before giving any legal advice, and then the State Council sends the approved draft agreement copy to Council of ministers.

The general secretariat of Council of ministers submits the approved text of the draft agreement and the provided legal consultation by the State advisory board to the Council of ministers for the permission of negotiations and signing the contract. The Ministry of Foreign Affairs prepares the document on negotiations and signing of contract and sends it to the General secretariat of Council of ministers for obtaining permission to its signing, and then to the House of Representatives to organize the ratification process.

The presidium of the Republic ratifies the Contract after the approval by the Council of representatives. The Ministry of Justice publishes the Contract and the law on the ratification or accession in an "official bulletin". The Ministry of Foreign Affairs takes necessary measures for the definition of a date of entry into force of the Contract after the publication it in "Official bulletin".

Scientists-lawyers of Iraq agreed that the concept of a ratio of international law and the internal law of Iraq was based on the dualistic doctrine; and the international law and the internal law represented two rather independent legal systems.

According to Mahomed Abbas Mohsen: "The will of the constitutional legislator in Iraq means that the contract, after adoption of law on the accession to it, has force of the law and the international law does not depend on the internal law in Iraq according to the dualistic doctrine (The Iraqi Constitution, 2005).

As for the control of constitutionality of international treaties, Article 93 of the Constitution of Iraq provides the following powers for the Federal Supreme Court: Respect for the constitutionality of current laws and rules; interpretation of provisions of the Constitution; settlement, the federal laws resulting from application, decisions, provisions, instructions and procedures issued by federal body; and others (Glennon, 1999).

4. Conclusions

The Article 4 of the law 30 of 2005 about "the Federal Supreme Court" does not provide the jurisdiction of supervision of constitutionality of international treaties for the Federal Supreme Court". For the purpose of filling a legislative gap, we found the need for an introduction of the amendment to article 93 of the Constitution of Iraq by the inclusion in the text of the Constitution of point on enforcing the jurisdiction of supervision of constitutionality of international treaties by the Federal Supreme Court of Iraq.

The law 30 of 2005 about "the Federal Supreme Court" was issued by the public administration for a transition period of 2004 and not changed or repealed according to the article 130 of the Constitution of Iraq as follows: "The current legislation remains in force if it is not repealed or is not changed according to provisions of the present Constitution" (Singer, 2003).

5. Summary

Despite the fact that the Constitution of Iraq did not provide any jurisdiction of the Federal Supreme Court for considering the constitutionality of international treaties, the court used this jurisdiction in the decree issued in connection with contest of constitutionality of article 40 / from the Ayr-Riad Arab Convention on cooperation on judicial to questions, ratified by Iraq according to the Law No. 110 of 1983.

Article 40/c concerns people as subjects to an extradition, sentenced to one or more severe punishments for perfect acts and punishable according to provisions of the contract. The federal Supreme Court revealed that this article contradicted the article 21 of the Constitution of Iraq according to which "The citizen of Iraq cannot be given to foreign bodies or the authorities".

According to the article 13 of the Constitution indicating that "No law contradicting this Constitution can be adopted", the Federal Supreme Court in the resolution No. 16/ Federal of 2015 decided that article 40/ from the Ayr-Riad Arab Convention on cooperation on judicial questions contradicted the existing Constitution of Iraq owing to what, the Court decided that "Article 40 of the Convention should not be applied". It should be noted that the judgment is obligatory for all authorities of Iraq.

As for the paragraph 2 of article 92 of the Constitution of Iraq, in which it is specified that the Federal Supreme Court consisted of several judges and lawyers, it should be noted that the interpretation of texts of the international treaties and disputes arising in the connection with the application of the international treaty demands existence in the structure of court of experts in the international law having sufficient international experience and researches in the general sphere of the right of international treaties and the international public law. Therefore, we suggest the need of existence in the court structure of judges specializing in the sphere of international law for the purpose of interpretation of international treaties.

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