

The Interdependence between the Domestic Legal Order and the International Legal Order

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ABSTRACT

International relations are social relationships which are born and developed according to the foreign policy of each state. States aim to regulate these relations in order to ensure a better collaboration between them. Legal provisions which are applied on the territory of a state form the domestic legal order, and are closely related to the international legal order which is formed by the assembly of international legal norms comprised in international law, that is created on the consent of the states to ensure the development of international relations.

Although they are different, between the two legal orders, there is a close interdependence determined by the relationships they govern and by the connection which exists between the internal and external policy of the states. Some of the norms in international law can be applied in the domestic law, as states adopt a certain conduct and their legislation cannot be contrary to this conduct and, at the same time, some norms and principles in internal law can generate effects and influence international law, as, for example, the principle of national sovereignty or the principle of equality of rights, principles which were enshrined by the French revolution, which have been taken over in international law.

KEY WORDS

EU citizenship, transnational citizenship, citizens' rights, active democracy, European citizens' initiative

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Introduction

In general, the word “order” means a regular succession¹ which has a spatial, temporal, logical, moral or aesthetic character. “Legal order is a harmonic unity of legal norms, as applied effectively in the life of a community”².

¹ Explanatory Dictionary of Romanian, Encyclopaedic Universe Publishing House, Bucharest, 1996, p. 726.

Legal norms are rules of behaviour established by the state and imposed to the society, if necessary, by the coercive force of that state. The imperative character of legal norms is essential because it ensures the order in the society and, at the same time, the stability of social relations.

The assembly of norms and principles in law which are applied inside a given state forms the domestic legal order and is closely related to the international legal order. The latter is made up of the assembly of norms and principles which govern the relationships between states, which are named international relations and are based on the consent of the states, which are sovereign and, thus, they are entitled to rights and assume obligations in their relationship.

There is no unique will created as a consequence of the consent of the states, no fusion of the different wills of the states, but states keep their own sovereign will, and, by means of an agreement, they achieve a reciprocal conditionality and exercise their will in the same direction, which is sanctioned by the stated legal norms. The consent of the states is determined, in its context, by the concrete socio-political conditions, which exist at an internal level, a fact which eliminates the possibility of a merger of wills in a general will in the process of formation of the norms in international law³.

The interdependence between the domestic and the international legal order

International law⁴ emerged with the states, at the same time, and was created due to the necessity of these states to regulate their relationships.

The basis of international law and its application is the consent of the states which, having equal rights, adopt legal norms which are compulsory for them.

The legal norms adopted by states on the basis of their consent are expressed by means of agreements, conventions or international treaties, which are also known as international laws.

N. Titulescu defines international law as “the product of a contract concluded between free and equal wills”⁵. Thus, international law presents a contractual, consensual and volitional character which originates in the consent of sovereign states that are free and have equal rights.

² E. Speranția, Introduction in the philosophy of law, Cluj, 1940, p. 41.

³ D. Popescu, A. Năstase, F. Coman, Public International Law, „Șansa” – S.R.L. Publishing House, Bucharest, 1994, p. 34.

⁴ The denomination international law was used for the first time in 1780 by the English philosopher and lawyer Jeremy Bentham (1748-1832). Until the 17th century the term “law of nations” (*jus gentium*) was used. In order to specify that it is a law that applies “between peoples”, the English lawyer Richard Zouche uses, in one of his works, which was published in 1650, the expression *jus inter gentes*. This expression, which did not inculcate, was taken from Roman law. See also G. Geamănu, Contemporary International Law, Didactic and Pedagogic Publishing House, Bucharest, 1965, p. 7.

⁵ N. Titulescu, Peace Dynamics, in Diplomatic documents, Political Publishing House, Bucharest, 1967, p. 298.

States can impose, on an internal level, by means of coercive measures, the supremacy of law⁶, but international law cannot be imposed by means of coercion, as it is – in the terms used by Nicolae Titulescu, a “law of coordination”, which has a consensual nature. Norms in international law cannot be created by unilateral manifestations of will on behalf of some states, but only by the agreement of the states, which proves that international law is a coordination, and not subordination law.

N. Titulescu affirmed that “international law appears for the whole world not as subordination law, but a law of coordination and the situation of each state, in relation with the other states, does not appear to be a state of dependence, but of independence”⁷. International relations comprise an extremely wide sphere of social relationships, in which diverse political forces, and the tendencies created by these forces manifest⁸. Thus, international relations are social relationships which are born and developed in the sphere of the external life of states.

According to the domestic law model, different branches of law concentrate on the objective to create a system of relationships which correspond to the needs of the society at a certain moment in time. Moreover, public international law responds to the need to regulate international relations and to satisfy the needs of the international society members. In this sense, we can speak about an international legal order. Just as any right represents a reflection of the society it is born in, public international law constitutes the assembly of legal norms which govern the functioning of international society⁹.

There is a series of connections between internal and international law, which go both ways, although the two legal orders are different.

In reality, the relationship between international law and domestic law has to be seen in the perspective of the interdependence which exists between the two legal orders. They are both the result of the same will, the power of the state, thus, internal legal norms cannot contradict the norms and principles of international law, which that state, as a part of an international treaty, committed itself to respect and, implicitly, there is an obligation that its domestic legislation does not contradict the norms established in the treaty.

The constitutions of states prescribe, in general, that the application of the treaties concluded by states will prevail to domestic provisions if national law differs. E.g., the Constitution of Romania establishes that the Romanian state pledges to fulfil the principles and the other general provisions of international law¹⁰, and with regard to the fundamental human rights¹¹, it is stated that international regulations shall take precedence, unless the Constitution or national laws comprise more favourable provisions”.

⁶ A. Alexe, The international legal order at the beginning of the 21st century, in *The Review of the Legal Councilors of the Army*, nr.1/2004, pp. 30-31.

⁷ N. Titulescu, *Peace Dynamics*, in *Diplomatic documents*, p. 298.

⁸ D. Mazilu, *Public International Law*, volume I, Lumina Lex Publishing House, Bucharest, 2001, p. 92.

⁹ R. Miga – Beșteliu, *International Law - An Introduction to Public International Law*, All Publishing House, Bucharest, 1997, p. 2.

¹⁰ Art. 10 in the Constitution of Romania, republished.

¹¹ Art. 20 align. 2 in Constitution of Romania, republished.

On other matters, such as citizenship, the provisions on territory, the organisms representing the state in international relations, etc., international law is bound to respect the national law dispositions.

Thus, while they both keep their peculiarities and influence each other, the two legal orders coexist in a coordination relationship, "in conformity with the real necessities of cooperation between states"¹².

In international relations, the states of the world commit themselves to a certain conduct and, as a consequence, at an internal level, the legal norms which are created by states cannot be contrary to this conduct.

N. Titulescu shows that, both « internal law, as well as international law, have a unique source: the legal conscience of peoples which confers a compulsory character to the laws born from their solidarity"¹³.

Conclusions

We have to highlight the role of international law in the fruitful development of international relations, and also in the external politics of states.

Thus, "the most authoritative experts observed that the international law provisions have the following mission: a. to rule the conduct of states in their mutual relations; b. to guide the activity of other international entities (international organisations and organisms), with the aim c. to determine a normal evolution of international life."¹⁴

In specialised literature it is indicated that "any state, regardless of its dimensions, level of development, etc., has its own interest on the international arena, in regions which can be closer or more remote from its borders. It protects these interests as a sovereign power according to international law and its principles, which are applied in international relations. The state relies upon the international legal order, on the respect of international legality by all the other participants to international life"¹⁵.

In international law, there isn't any authority surpassing states having legislative attributions. The provisions of the international law are created by states which become the addressees of the norms they establish. Moreover, there is no centralised system of coercion to ensure, if necessary, the compliance with the law and to solve, in a compulsory manner, litigations occurred as a result of the breach of legal provisions.

It is true that, in international law, there are jurisdictional organs, but their procedure is not compulsory, it is optional, as it can be triggered only by means of the express agreement of each of the states involved.

An organised coercion system is the United Nations, which is not an organisation that supersedes states, but an organisation created by and between states, based on their agreement to collaborate.

¹² C. Andronovici, Public International Law, Graphix Publishing House, Iași, 1993, p. 49.

¹³ N. Titulescu, State Sovereignty. Peace organisation, in Diplomatic Documents, p. 848.

¹⁴ D. Mazilu, Public International Law, p. 93.

¹⁵ C. Vlad, Contemporary International, Political and Diplomatic Relations, Ed. Tomorrow Romania Foundation, Bucharest, 2001, p. 41.

In the past decades, international organism were convened¹⁶, which were vested with attributions aiming to promote and implement the provisions agreed by states at a world level, that function and develop their activities according to the agreement between states.

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¹⁶ E.g. The United Nations Commission on Human Rights, as well as the Sub-Commission on the Promotion and Protection of Human Rights.