

THE INFLUENCE AND STATUS OF INTERNATIONAL LAW IN THE CONSTITUTIONAL SYSTEMS OF SOME EAST AND MIDDLE EUROPEAN TRANSFORMATION STATES

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Summary

Some twenty years ago, the importance of international law, particularly for practical purposes, could be described as *marginal* in national legal orders in the socialist Central and Eastern European (CEE) Countries. The main reason for this was the dualist approach in regard to international law. Fundamental political and economic changes, such as the Velvet Revolution in Czechoslovakia, marked the end of the cold war and the beginning of a transition process. The changes in national legal orders have been accompanied by substantial modifications in the area of constitutional law, mostly resulting in the adoption of entirely new or radically modified constitutions. This is true also for the Czech Republic, Slovakia, Poland and the Russian Federation.

One of the most remarkable common characteristics of the new constitutions of the CEE countries is the shift from a dualistic approach to a broad openness to international law. Despite this common feature the manifestation of this openness cannot be regarded as uniform – the methods used by states to deal with international law and to ensure the conformity of the domestic legal order with their international obligations vary.

The common denominator of the constitutional orders under review is the fact that the rules of international law are considered to be a part of their national

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legal orders. General provisions concerning the relationship between national law and international law can be found in the Czech, Russian and Polish constitutions, but not in the Slovak constitution.

The common feature of all four constitutional texts is that they take a clear position on the status of treaties, stipulating conditions (approval by parliament, promulgation, etc) under which a treaty or certain categories of treaties (eg as listed by Article 49 of the Czech Constitution) will be considered to be part of the national legal order, as well as the hierarchical status of treaties in the case of a conflict with national law. In all four countries under consideration, the rank of treaties lies between the level of the Constitution and that of ordinary parliamentary statutes.

The situation is considerably different in regard to the role of customary international law: only the Russian Constitution includes not only treaties but also customary international law in the legal order. Nevertheless, Slovak, Czech and Polish constitutional provisions stipulate the commitment of the states to fulfil their obligations under international law, including customary international law. Even though legally binding, these provisions are not identical with general provisions incorporating certain categories of international law as stated above.

The openness to international law is demonstrated also by the inclusion of provisions pursuant to which states can transfer certain powers to international organizations. (Such provisions were included in the constitutions of e.g. Slovakia, Poland and the Czech Republic in the context of their integration into the EU for the purpose of ensuring the direct application of Community law.)

Thus, if considering the *formal* openness to international law, a high degree of willingness to open the domestic legal orders to international law can be discerned in the constitutional systems of the states under review. However, the extent of constitutional provisions on the relation of a particular state to international law does not necessarily strengthen its application in practice, as can be observed in the legal order of the Russian Federation.

When determining the *factual* status of international law and its incorporation in the domestic legal orders of the CEE countries, the judicial practice of national courts is of great importance, in particular the judicial practice of constitutional courts. The question of the role of international law in the decisions of constitutional courts appears to be even more interesting because of the fact that implementation of constitutional jurisdiction belongs to one of the most important innovations of CEE transition countries after the end of the cold war. Their broad competencies in respect to international law can be seen as an additional indicator of the openness of their legal orders towards supranational legal rules.

International law plays an important role not only as a subject of judicial review but also as a criterion of constitutionality applied in national procedures before the constitutional courts. The extensive jurisprudence of national constitutional courts based on international law is to a large extent characteristic of the CEE Countries. Their constitutional courts often rely on international law, especially human rights, when reviewing the constitutionality of domestic acts. This underlines the fact that general constitutional provisions on international law do not remain only a 'dead letter.' However, when demonstrating their openness towards international law, constitutional courts sometimes exceed the limits of their competences, as can be observed e.g. in the case of the Czech Constitutional Court. (Despite the fact that the changes introduced by the Constitution in 2001 caused it to lose the competence to use international law as a criterion for its decisions, the Court continued to base its decisions partly on international law.)

Generally it can be argued that the acceptance of international law is remarkably high in the legal orders of the countries under review – in particular when taking into consideration the relatively short time which was needed not only to formally ensure the role of international law, but also to ensure its implementation in practice, most notably in the judicial practice of constitutional courts. This does not mean, however, that there are no difficulties which have to be solved in the future. The application of customary international law by

national courts is an example of this. However, the opening of national legal systems of the formerly totalitarian states towards international law has undoubtedly had a positive influence on the process of their transformation towards the rule of law.

Key Words

International law

Constitution

Eastern Europe

Central Europe

Transformation

Czechoslovakia

Czech Republic

Slovakia

Poland

The Russian Federation

Rule of Law