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INTERNATIONAL TREATIES AND THE LEGAL ORDER OF THE SLOVAK REPUBLIC (ON THE ISSUE OF DOMESTIC AND INTERNATIONAL LAW)

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The author studies the issue of the relationship between domestic and international law from the perspective of the legal regulation of the Constitution of the Slovak republic, with particular emphasis on the problem of international treaties in the legal order of the SR. This problem is new for the SR from three points of view: 1. the short existence of the SR as a subject of international law, 2. the dissolution of the Czech and Slovak Federal Republic, 3. the collapse of the bipolar world and efforts of the SR to accede to the group of democratic countries functioning on the basis of the rule of law. After analysis, it appears that the Constitution of the SR is based, although not with full consistency, on a dualistic conception. Particular attention is directed towards art. 125, letter e of the Constitution of the SR, concerning the issue of the relationships of international treaties and international law. Art. 11 of the Constitution of the SR establishes the primacy of international treaties on human rights and basic freedoms over legislation if they secure a greater extent of rights and freedoms, which, however, is only a partial regulation. The author proposes to express the conception and principles of the foreign policy of the SR as well as the relationship between domestic and international law generally in the Constitution of the SR. He also proposes to establish the possibility of the delegation of part of the execution of sovereignty to international bodies in connection with the accession of the SR to the EU.

According to the theory of law, the "legal system" consists of norms and the links between them, relations which are characterized by stability, invariability of the structure of the system. The legal system is composed of a set of legal norms and a set of their legal links, whose character is determined by the properties of the norms. The stability of the links and their character make up the structure of the legal system. This collection of valid norms is also simply called "law" or "valid law" or "objective law". "Conflicting" law is also a part of the legal system (see: Prusák, J.: *Teória práva*, Bratislava, PFUK, 1995, pp. 206–207).

The formal sources of international law are international treaties, international customs and binding decisions of international bodies and organizations, e.g. verdicts of arbitration and court organs, decisions of the UN Security Council and

measures according to chapter VII of the UN-Charter. The significance of international treaties is underlined by the fact that the Statute of the International Court of Justice whose assignment is to decide on cases submitted according to international law, takes as a basis for decision-making in terms of art. 38 of the Statute:

a) international conventions both general and special, determining the rules explicitly recognized by the states in contention,

b) international custom as evidence of the universal practice accepted as law,

c) the general principles of law recognized by civilized nations,

d) with the exception of art. 59, judicial decisions and the teachings of the most highly qualified professionals of the various nations as an aid in establishing legal regulations.

Art. 59 states that the decision of the Court is binding only on the contending parties and only for the particular case that was decided by the Court.

I considered it necessary to introduce these basic facts from the perspective of the topic. Some contentious questions of understanding certain sources of law in the Slovak legal order can be mentioned.

For instance, according to M. Posluch and Ľ. Cibuľka, international treaties on human rights and freedoms are also sources of state law in terms of art. 11 of the Constitution of the Slovak Republic (SR) (in: *Štátne právo SR*, PFUK, 1994). A question may be raised whether only these international treaties are the sources of the state law. According to these authors, decisions made by the President of the SR concerning the state law (e.g. the decision of the President of the SR to negotiate some international treaties, published in the Collection of Acts and Orders, No 205 of September 28, 1993) are also sources of state law. Another author, Professor Prusák, argues that regardless of the title, organizational acts do not contain generally recognized legal regulations and do not belong to the sources of law in the SR (op. cit., p. 176). Other authors also have doubts about the question of the form of decision, mainly because of the fact that there is no legal regulation that would determine the form and obligation to publish such acts in the Collection, so that they lack two of the three attributes of legal regulation... They rank them among organizational acts. The delegation of "legislative competence" according to the legal order of the SR is probably only by the form of the Constitution law or the law.

J. Kráľ argues that by publishing out the decision of the President of the Republic, the editor of the Collection of Acts and Orders acted *extra legem* since the law cited does not require the publication of these decisions. In terms of the Act No. 1/1993, Coll, the sources of law in the Slovak Republic, which are proclaimed as generally binding legal regulations are: the Constitution of the SR, Constitutional laws, Acts of the National Council of the Slovak Republic, Slovak Government orders, generally binding legal regulations (public notices, decrees of the ministries and of other central bodies of the public administration of the SR), international treaties, decisions of the Constitutional Court (see: Kráľ, J.: *Ústava SR a ústavné práva*, Právny obzor, 6/1995, p. 488).

The government order of the SR No. 419 of May 3, 1994 – Principles of the Slovak government for conclusion, constitutional negotiation, implementation, and renunciation of international treaties is, according to some authors, a competence provision which should, however, have the form of a law (see: Mogelská, J.: *Platná úprava medzinárodnej zmluvy v SR*, Právny obzor, 1996, p. 9, 10). In the introduction I mentioned some questions of the sources of international law. Theory should also take a basic attitude towards these questions.

Looking back at the introduction, it should be emphasized that only comprehensive analysis can elucidate the situation of our legal regulations and its problems not only from the perspective of doctrine but especially from the point of view of the needs of application which the doctrine can achieve. The conclusions of the theoretical and practical knowledge will lead to the proposals *de lege ferenda* or *de lege constitutione.*

The problem of the relation between domestic and international law is not new. However, the legal order of the SR is new for the SR from several points of view:

1. the short, three-years' existence of the SR as a subject of international law,

2. the dissolution of the Czech and Slovak Federal Republic, reception of its legal order and succession to its international treaties,

3. the collapse of the bipolar world and efforts of the SR to accede to the group of democratic countries functioning on the basis of the rule of law (agreement on the accession of the SR to the EU, membership of the SR in the Council of Europe, issues of harmonization and approximation of Slovak legislation to that of the EU).

4. Conference on Security and Cooperation in Europe (CSCE) and especially its Final Act of 1975 and the decisions of the subsequent meetings which influence law-making are significant for the development of international relations, although the CSCE commitments are of a political character (so-called soft law). The following CSCE meetings, e.g. the Vienna meeting of 1986–1989 confirmed in the Final Document that participating states would secure the correspondence of their laws, legal regulations, practice, and politics with their commitments according to international law and would be harmonized with the provisions of the Declaration of principles obeyed by the participating CSCE countries. This declaration is part of the CSCE Final Act of 1975. For instance,the recommendations of such bodies as Parliamentary Assembly of the Council of Europe are of a special character from the point of view of their fulfilment.

Basic social and political changes could not fail to play a large part in conditioning the formation of the conception of the Constitution of the SR, its individual chapters and articles as well as the formation of other legal norms and their application through particular organs.

The determinants mentioned in the introduction influenced and conditioned one another. We shall try to shed light on their relations. The problem of the relation between domestic and international law is not unknown in Slovak theory and practice. A number of authors, both theorists, and practically involved people dealt with

this issue and brought some new ideas. It should be said that the fact that the issue of domestic and international law was studied more by experts in international law than by experts in domestic law, particularly state and constitutional law experts, is a sort of peculiarity, although it is our common task to explore and solve chiefly the question of international commitments from the perspective of their application in the SR under the existence of the Vienna Convention on the Law of Treaties, which codified the common law of international treaties, as well as the Vienna Convention on the succession of countries to international treaties (the V.C. was published as a public notice of the Ministry of Foreign Affairs of the ČSSR, which was the contract party of the agreement from August 28, 1987). The principle is known that international law does not prescribe the means of securing the binding character of its sources, mainly international treaties and international customs in domestic law. There is enough space for effective cooperation at the borderline of the contact of both systems of the law, if we recognize it, i.e. of domestic and international law. The theory of law plays a significant role there. According to both international law and domestic law the binding character of the international treaty requires fulfilment of certain conditions.

I would like to make a marginal point that, to my knowledge, the concept of "international law" was not used in the Constitution of the Slovak Republic.

The fact that international law does not recognize a rule which would determine the relationship between domestic and international law does not mean that a state does not determine the means of securing the fulfilment of the commitments imposed on the state as on a subject of international law as well as on persons and bodies subject to its jurisdiction.

What is the state of regulation?

The resolution of the question would have been facilitated by a general reception norm, a provision, which would have regulated the relationship between international and domestic law.

Interestingly, such a provision was not included either in the legal order of the ČSR or in that of the ČSSR. This does not mean, however, that this relationship was not solved in particular questions of social relations (see: Wagner, A.: *Úvahy nad československou ústavnou úpravou plnenia záväzkov vyplývajúcich z medzinárodných zmlúv*, Právnik 9, 10, 1989; Azud, J.: *Niektoré otázky plnenia medzinárodných zmlúv z hľadiska vnútroštátnej právnej úpravy (na okraj úvah o ústave),* Právny obzor 7/1990, SAV, Bratislava).

The Slovak Constitution avoided a direct answer to the issue of the relationship examined in a general formulation. Its attitude to this problem was e.g. a special reference under the provision of art. 11 of the Slovak Constitution to international treaties on human rights and basic freedoms and in references to other laws (and indirectly in art. 125, letter e of the Constitution of the SR).

It is remarkable that the Constitution of the Czech Republic (ČR) does not contain a general rule which would regulate the constitutional solution of the relationship between international and domestic law either. It regulates this relationship with regard to international treaties on human rights and basic freedoms, which are binding on the ČR and which is a partial problem. Dr. Wagner writes that the first Constitution of the ČR does not contain any provision solving the relationship between domestic and international law in a more comprehensive way. This concerns international common law, international treaties, which are binding on the ČR and acts of international organizations, of which the Czech Republic is a member (see: Wagner, A.: *The First Constitution of the ČR from the perspective of international law,* Právnik No. 3/1994, Praha).

A certain analogy to our present situation arises since the Slovak legal order does not know a general reception norm for solving the relationship between domestic and international law in the Slovak Constitution either. This might mean a continuation of a sort of caution with respect to the commitments of international treaties, which was typical of the legal order of former socialist countries, both the ČSSR and ČSFR, emphasizing the class character of international law as one of its characteristics according to the jurisprudence of international law at that time.

I would like to comment that as early as 1985 I proposed that during considerations *de lege ferenda* inclusion in the Constitution of the principles of foreign policy and international law by which Czechoslovakia was bound could be considered appropriate. In 1990 I repeatedly proposed stating in the new Constitution of ČSFR, which was then under preparation, that the ČSFR would keep to the binding principles and norms of international law and international commitments. Forms, methods, and means of transforming international law into domestic law could be regulated through a special law (see: Azud, J.: *Niektoré otázky plnenia medzinárodných zmlúv z hľadiska vnútroštátneho práva,* op. cit.).

This proposal also concerned considerations in the preparation of the Constitution of the SR.

Before further explanation, I would like to mention the view which I formulated in the article "On the question of decision by the Constitutional Court of the Slovak Republic about the harmony of the Constitution of the Slovak Republic with international treaties on human rights" (Právny obzor 1993, SAP, Bratislava). There I wrote, that a conception of the relationship between domestic and international law, shaping this relationship by a combination of the principle of the "alternative priority of law", as it is permitted in international treaties on human rights and freedoms in the Constitution of the Slovak Republic and the general reception norm for other international treaties derives from comparison of the theme *de lege constitutione*, which I proposed in 1985 (P.O. No. 8/1989) making it appropriate to include the principles of foreign policy and international law by which the state is directed in the new constitutions of the Czecho-Slovak Socialist Republic or Czech and Slovak Federal Republic; and the similar theme in the proposed Constitution of the Slovak

Republic, as also from the analyses of article 11 of the Constitution of the Slovak Republic. Such a combination might resolve the issue of the relationship between domestic and international law in the Constitution or in the legal order of the SR on a satisfactory basis. This is a very general formulation but it anticipates in principle a possible conclusion of the solution to the amendment.

It was not my intention to overburden the contribution by this brief account; I just wanted to alert to a certain similarity or continuity of legal regulation followed in the Constitution and in the legal order of the SR. The Constitution of the SR contains 8 articles concerning international treaties. These involve the competences of the National Council of the SR, the President of the SR, the Government, the Constitutional Court, and courts, as well as the issues of the succession of the SR to international treaties after the split of the ČSFR. The exact number of references to international treaties is greater in the legal order of the SR, which, however, cannot change the quintessence of the problem of arrangement. We shall mainly rely on the constitutional arrangement which provides a sufficient idea of the conception of relations of the two systems of law, the law of the SR and international law.

According to art. 102 of the Constitution of the SR, the President represents the SR in international relations, negotiates and ratifies international treaties. Negotiation of international treaties, where the approval of the National Council of the SR is not necessary, can be delegated to the Slovak government or with the government's approval to its individual members.

According to the Constitution of the SR, only the President of the Republic has in principle the right to negotiate international treaties, i.e. those which do not require assent of the Parliament; he can, however, confer the negotiation of particular international treaties, i.e. those, which do not require the approval of parliament, upon the government or with the approval of the government upon its members; this he has already done. Art. 102, letter a of the Constitution of the SR, does not say that he has to confer his right upon other state organs.

Pursuant to art. 119, the government of the SR decides as a body on international treaties (letter f of art. 119).

According to art. 86 of the Constitution of the SR, it is within the competence of the National Council of the SR to approve international political treaties, international economic treaties of a general character as well as international treaties which, in order to be implemented, require a law for ratification.

The Constitution recognizes a certain cohesion of state and constitutional bodies in the negotiation, approval and ratification of international treaties. According to international law, each country is competent to conclude treaties (art. 6, V.C.). Thereby, the following persons are considered to be representatives of their countries on the basis of their functions without obligations to submit authorization.

a) heads of state, prime ministers, foreign ministers for the implementation of all acts associated with signing the treaty,

b) heads of diplomatic missions for the acceptance of the agreement between the country by which they are authorized and the accepting country,

c) the authorized representatives of countries at international conferences or their organs for the acceptance of the text of the treaty at this conference within this organisation or organ (art. 7, V.C.).

As for persons and organs competent to conclude international treaties, Government principles No. 19 of May 3, 1993, are in line with the principles of international law. "The aim of the principles is to establish a united procedure in concluding, constitutional negotiation, implementation, and rejection of international treaties, conclusion of which is within the powers of the President, government of the SR and its members." (Art. 1, section 1, Government principles)

Equally strictly taken, from the point of view of the Constitution of the SR, conclusion of international treaties is not in the direct competence of the Slovak government or its particular ministers although it might be deduced from the wording of the mentioned article of Government principles. The delegation of the President's powers follows from art. 102, letter a of the Constitution of the SR. The President cannot, however, delegate negotiation of such international treaties which require approval of the National Council of the SR before ratification to the government or to its individual members. This concerns international treaties reported in art. 86, letter *e* of the Constitution of the SR which has already been cited. Of course, the President may empower a person, who is considered to be the representative of the state, to accept or verify the text of the treaty or to express approval of being bound by the treaty (delegation ad hoc on the basis of authorization). The concept "authorization" means a document issued by a particular state body, through which one or more persons are authorized to represent the state in negotiations, acceptance or verification of the text of the treaty to express the approval of the state to be bound by the treaty or to perform any act pertaining to the treaty (see art. 2, V.C.)

We have already mentioned the issue of the method of delegation of the competence of the President of the SR in the form of decision in the sources of law in the SR although in the theory there is no unambiguous opinion of this form of the delegation of powers.

On the basis of the analysis of the three articles of the Constitution: art. 11, art. 86, letter *e*, and art. 144, section 2 of the Constitution of the SR, some authors point out that the Constitution contains two possible principles for the relationship between domestic and international law and together create principles which can be denoted as "mixed dualism". Here are their arguments:

1. Art. 11 of the Constitution of the SR establishes the primacy of international treaties over the act under certain circumstances,

2. according to art. 86, letter *e*, two categories of international treaties are recognized:

a) international treaties which have been approved by the NC SR before their ratification by the President of the Republic and declared through publication in the Collection of Acts and Orders of the SR in terms of §1, section 1, Act 1/1993 Coll,

b) international treaties which have to be incorporated into the legal order through publication of an act taking on their content,

3. according to art. 144, section 2, of the Constitution of the SR "if it is established by the Constitution, an international treaty is also binding on judges" (the conjunction 'also' expressing the dualistic conception of the article should be noticed) (see: Mogelská, J., op. cit.)

Other authors state the symbiosis of monistic and dualistic conception with the preference of international treaties (see: Pavelka: *Sukcesia do medzinárodných zmlúv*, manuscript of PhD. Thesis).

The principle of the priority of the legal regulation is based in the Slovak legal system on the presumption that international and domestic law are two basic legal systems which act in different spheres with respect to different addressees. Both systems are characterized by the known specific features of legal regulation. In spite of their specifics, solution is manifested, according to the cited author, in the process of the implementation of international norms into domestic law by the unity of the state's will which is manifested in the state's function. It cannot be at variance (Pavelka op. cit.). This statement, which is a theoretical starting point of the author, is interesting by its emphasis on the significance of international treaties which have to be a constituent part of the rule of law. It should be born in mind for the future, particularly for the case of the accession of the SR to the EU because the so-called primary legal norms of the EU will be directly obligatory for the SR, mainly the form of "order". The question will have to be solved by ammending the Constitution of the SR, as was done in France.

The doctrine states that according to the Constitution of the Slovak Republic, international treaties have in some cases greater legal power than an ordinary act. The precondition of the primacy of international treaties over legislation are as follows:

a) their subject concerns human rights and basic freedoms

b) they secure a greater extent of basic rights and freedoms (the question is what is greater extent and who determines the content of this extent, whether the court or a body applying the law) (remark by J.A.)

c) they have been ratified as by law enacted.

The control of the consistency of the law with the Constitution and constitutional laws and with the international treaties declared as by law enacted is within the competence of the Constitutional Court (see: Prusák, op. cit., p. 190). In his opinion, international treaties, which require legislative ratification before implementation, have the legal power of law in some cases. The law-maker anchored the precedence of international law, or, more exactly, of international treaties over the domestic law. For instance, commercial law contains the rule, which enables the

precedence of the Commercial code only as long as the international treaty which is binding on the SR and has been published in the Collection of acts does not establish different regulation (for details, see: Cúth, J.: *Medzinárodné obchodné právo* (International Trade Law), Obzor, Bratislava 1983).

The Civil Code states that the court interrupts its proceedings if it comes to the conclusion that the legal regulation which concerns the matter is at variance with the Constitution, the law or an international treaty, by which the SR is bound. In this case the proposal is submitted to the Constitutional Court (see: Prusák, op. cit., p. 190).

§ 2 of the Law on international private and procedural law also contains a special regulation, stating that "the provision of this law will only be used as long as something else is not established by an international treaty, which is binding on the Czecho-Slovak Republic". The provision of 375 of the Criminal Code on legal contacts with foreign countries, which for direct application of the international treaty requires prior publication, is another case. I introduced some particular regulations in the legal order of the SR for illustration.

Thus we approached the issue of the potential transformation of the international treaty on the basis of dualistic conception which requires it. If the rule of international law is to become binding on the subjects of the domestic law, it is necessary that its content would be taken over by the domestic norm, i.e. that the rule of international law would be transformed into domestic law. Only under such conditions can the content of international law become legally binding within the domestic region. Within the state, it is valid not as international law but as domestic law since the source of its binding character is the exclusive sovereign will of the particular country (see: Tomko et al.: *Medzinárodné právo verejné (MPV)* (International Public Law), Bratislava, 1988, p. 29).

According to dualists, domestic norms preserve their validity even if they are at variance with international law. According to this theory, only the domestic law which directly binds persons subject to the particular state power, is valid within the state. It should be mentioned that the jurisdiction of international law argued as early as before the revolutionary years of 1989/1990 that the state bears responsibility for the publication of the domestic norm contradicting the international law. (*MPV*, p. 29). The state's obligation to adapt the domestic law to the commitments from international law follows from the principle of the international law "pacta sunt servanda", from the Vienna agreement on contract law of 1969 according to which particular states cannot appeal to provisions of their domestic law as the reason for not fulfilling the treaty (art. 27). International treaties can even require from particular states to cancel their internal norms which are at variance with the particular treaty (art. 2, letter *c* of the International Covenant on the removal of all forms of racial discrimination and the International Covenant on avoiding and punishing the crimes of apartheid, and other international treaties).

Thus neither the monistic theory of the primacy of the domestic law nor the monistic theory where international law takes precedence over constitutional and legal

regulations in the legal order are preferred. The dualistic conception also has its imperfections since it separates international law from domestic law (see: Wagner, A., op. cit.).

A question has emerged particularly in connection with the Constitutional act No. 23/1991 Coll, which introduces the Covenant on Basic Human Rights and Freedoms as a Constitutional law of the Federal Assembly of the ČSFR. Immediately on its adoption, the doctrine presented at least three attitudes to 2, which says: "International treaties on human rights and freedoms ratified and declared by the Czech and Slovak Federal Republic are universally binding in its territory and take precedence over the law."

According to V. Ševčík "the nature of these treaties with respect to their binding character was expressed by the fact that such treaties should be given primacy over ordinary laws" (see Melenovský J., Právnik No 11, 1992). According to P. Rychetský, the principle that rights and freedoms anchored in international treaties in which ČSFR is signatory, are in its territory just binding as constitutional laws of the ČSFR, was selected as the most adequate principle from among variants which might have been taken into account (see: *Právní stát u nás*, LN No. 36, 5 Sept 1991). And ultimately, Č. Čepelka argues that by "the accession of Czechoslovakia to the European Covenant on human rights, the content of the treaty changes automatically in terms of §2 of the Constitutional law, which introduces the Covenant" (see: Čepelka, Č.: *Evropský standard lidských práv*. *Sborník prác učitelů PF UK* Praha, 1992). We can add the fourth opinion which states that the Constitutional law No. 23/1991 Coll, which introduces the Covenant on Basic Human Rights and Freedoms, has not been received into the legal order of the ČR. But the Covenant was, viz. in art. 3 of the Constitution of the ČR according to which it is part of the "Constitutional order of the ČR" and alerts to two provisions of the Law, namely §1, section 1 and §6, section 1 (consistency of constitutional and other laws and legal regulations, their interpretation and application consistent with the Covenant, consistency of laws and legal regulations with the Covenant by December 31, 1991) (see Wagner, A., op. cit.).

We should direct special attention to art. 125, letter e, of the Constitution of the SR, which is particularly interesting from the perspective of our topic. I shall explain it below.

Through its provisions, either conscious or by omission, the question of the relationship between domestic Slovak law and international law, of international treaties in particular, declared and enacted by law for the implementation of the laws or probably the majority of international treaties is being solved rather principally. The treaties ratified by the President of the Republic and other treaties, if they contain regulation concerning the legal status of physical persons and legal persons and their justified interests are declared in the Collection (art. 6 Act No 1/1993 Coll. on the Collection of Acts of the SR). If an international treaty is declared in the Collection of Acts, the notice of the Ministry of Foreign Affairs on the conclusion of

the treaty contains both the Slovak wording and the full wording in the language in which the Treaty was prepared (§8 of the cited law).

Further, §4 of the cited law, section 3 states that international treaties are declared so that the announcement of the Ministry of Foreign Affairs on the conclusion of the treaty is put out in full wording and together with the data important for its implementation is published in the Collection of Acts. If an international treaty concerns only a small number of physical persons or legal persons, the Foreign Ministry of the SR submits only a proclamation about the place where one can find it. Thus international treaties are also regularly proclaimed in accordance with this law and are binding on the SR.

This procedure might probably be called not only transformation, but indirectly also a universal reception norm, reception of a considerable part of international law, its treaty part.

According to a similar provision of the Constitution of the ČR, art. 87, section 1 and 2, the "Constitutional Court of the ČR may decide on:

a) the annulment of laws or their particular provisions if they are at variance with the Constitutional law, or with an international treaty according to art. 10,

b) the annulment of other legal regulations or their individual provisions if they are at variance with Constitutional laws, with ordinary laws, or with international treaties according to art. 10."

Art. 10 of the Constitution of the ČR states that the ratified and declared international treaties on human rights and basic freedoms which are binding on the ČR, are binding immediately and take precedence over the law (Coll No.1/1993, Constitution of the ČR of December 16, 1992). The Constitution of the ČR reduced the decision-making of the Constitutional Court of the ČR to international treaties on human rights. We mention it because the Constitution of the SR does not contain such a limitation *expressis verbis*; this might indicate not only a partial regulation, which is represented by art. 11 of the Constitution of the SR or references of several laws to the precedence of the regulation according to international treaties, i.e. to incomplete reception of international treaties which, however, does not concern the extent of all sources of international law. This is a peculiarity of the regulation of the Constitution of the SR.

The lack of unity in the interpretation is also reflected in the Slovak literature. J. Klučka is of the opinion that the term "act" can be interpreted as a synonym of the whole domestic legal order or as one of the specific forms of the domestic legal regulation, i.e. within the narrow technical meaning of the concept. According to him, "act" is a sufficiently precise definition of the type of domestic legal regulation and therefore, there is no reason to add any unfounded and extensive interpretation in the form of the domestic legal order (see: Klučka, J.: *Miesto a postavenie zmlúv o ľudských právach a základných slobodách v právnom poriadku SR*, Právny obzor 4/1993, p. 319).

Other Slovak authors, Z. Valentovič, P. Vršanský, Š. Šebesta, V. Strážnická, and J. Azud expressed different opinions in the discussion in the journal Právny obzor 5/1992 – *Medzinárodné zmluvy o ľudských právach a základných slobodách a vnútroštátna úprava ČSFR*.

The author of this contribution goes on, arguing that the Constitutional Court can investigate the harmony of the Constitution with international treaties since from the point of view of international law, in accordance with art. 27 of the Vienna Agreement, "domestic law" undoubtedly also includes from the point of view of international law the Constitution and Constitutional law in addition to other legal norms (see Azud, J.: *K otázke rozhodovania Ústavného súdu*, Právny obzor, 1993, p. 292 ff). The author also referred to the verdict of the Permanent Court of International Justice of 1932 that a state cannot object to another state on the basis of its own Constitution to avoid commitments imposed on the state by international law and valid international treaties (PCI sr A/B NO 44, p. 74) – that is the Constitution also has to be consistent with the international treaties concluded by the state. The International Court of Justice decided in its attitude that the basic principle of international law is the primacy of this law over domestic law (cit. according to Pavelka, op. cit.). The unanimistic doctrine admits that in the case of conflict, i.e. collision between domestic and international law, a later treaty derogates the Constitution. Other authors admit that the later law has primacy over the treaty. Yet others are of the opinion that in the case of conflict, the treaty always has primacy over the law regardless of whether it concerns an earlier or later law. Some even consider the principle of the precedence of the treaty over the law to be one of the unwritten principles of constitutional law. In the light of the whole range of presented opinions, my attitude given in the cited article does not seem so extensive (see: Henkin, Pugh, Schachter, Smit: *International Law Cases and Materials*, West, 1993, p. 143 ff).

The primacy of international law was confirmed by the International Court of Justice on April 26, 1988, as has already been stated.

All in all, after exhausting domestic instruments, the person arguing violation of his/her human rights, can submit a complaint to the Commission or to the Court of Justice according to the European Covenant regardless of the constitutional regulation of a particular state if it is a participating state.

Such an interpretation may seem too extensive but its sense has to be taken into account from the point of view of the guarantees and international protection of human rights as well as guarantees and responsibilities for the fulfilment of international treaties and commitments.

Another question concerning the issue of international treaties in relation to the Constitution of the SR or its legal order, is the question of the succession of SR to international treaties and reception of the law, where international treaties are its constituent part. We do not deal with these questions in this contribution.

SOME CONCLUSIONS AND PROPOSALS

1. It is essential that states should satisfy their commitments according to international law, but the way they secure it is their own business. From the perspective of the topic and intention of this paper, investigating the regulation of the issue of international treaties in the legal order of the SR, it was not our intention to bind ourselves to theoretical constructions and subsume the Slovak legal situation in the existing schemes. It does not actually completely fit into them. Practice, bearing in mind also the conception of the Constitution, is often more complicated than theory, which is, I think, also our case; although we can mention very briefly that, evaluating the theories of the relations between international and domestic law, modern authors do not realize this trend any more (see e.g.: O'Connell, D.B.: *International Law*, Stevens & Sons, London 1970).

2. Since the Constitution of the SR does not contain a general "reception norm", an opinion can in principle be adopted that the Constitution of the SR is based on the dualistic conception but not quite consistently. Some authors, e.g. Mogelská, name our legal status "mixed dualism". Others state the "symbiosis of monistic and dualistic conception with the preference for international treaties" (Pavelka). Others are of the opinion that in some cases the power of international treaties is greater than that of ordinary law (Prusák). Neither the monistic theory of the primacy of the domestic law nor the monistic theory with the primacy of international law are preferred with respect to the constitutional situation in the SR. The dualistic conception itself separates the two systems from one another and therefore shows imperfections. Some characterize the examined relationship as synergism because we cannot imagine one without the other (Wagner). According to J. Klučka, the provision, i.e. art. 125, letter e of the Constitution of the SR and the Law of the National Council of the SR 38/93 Coll places valid international law above other generally legally binding regulations of the SR and thus establishes the priority of international law within the legal order of the SR. The Constitutional Court states, on the basis of the proposal of justified subjects, the inconsistency of the generally binding regulation with the international treaty and issues judgements, which will be published in the Collection of Acts... nonfulfilment of the commitments from a valid international treaty establishes the international accountability of its member states.

3. It can be mentioned, however, that the concept of "international law" is broader than "international treaty", which is just one, although probably the most important, source of international law and often also the source of domestic law.

There has been a proposal in our literature since 1985 and 1990 that in the new Constitution of the ČSFR, which was in preparation then, the ČSFR should observe the principles and norms of international law and international commitments. The forms and methods of the transformation of international law into domestic law might be amended by a special act (Azud, J.). In 1993, the same author proposed a

conception of the relation between domestic and international law by means of the combination of the principle of the alternative priority of law as it is established in international treaties on human rights and basic freedoms pursuant to art. 11 of the Constitution of the SR and the general reception norm for other international treaties (Azud, J.).

On the basis of the additional analysis it can be stated that art. 125, letter e/Constitution of the SR is of particular importance. Its provision actually solves, in my opinion, either consciously or by omission, a question of the relation of international treaties declared in the way established for the implementation of the laws, i.e. of the majority of international treaties. This procedure might probably also be called indirectly, as we have already said, the universal reception norm of a considerable part of international law, its contract part and the priority of this law. This is one of the basic conclusions of the analysis.

We can judge that the Constitution of the SR, without limiting the resolutions of the Constitutional Court on the consistency of the generally legally binding regulations with international treaties just to international treaties on human rights (as it is for example in the Constitution of the Czech Republic in art. 87, sections 1 and 2, although the Constitution of the SR in art. 11) establishes the priority of international treaties on human rights and basic freedoms over the law, if they secure a greater extent of basic rights and freedoms before the law, which is a partial regulation represented by this article, or also references of a number of laws to the precedence of the regulation according to international treaties means, although incomplete, yet reception of international treaties; not concerning, however, all sources of law. This is a special feature of the regulation of the Constitution of the SR and the legal order in the SR.

We think that the Constitution of the SR could have already contained the conception and principles of foreign policy of the SR as well as the relationship between domestic and international law, e.g. through a formulation that "the Slovak Republic fulfils its commitments derived from the universally recognized principles and norms of international law, particularly from international treaties, in which it participates, as well as acts of international governmental bodies and organizations of which it is a member".

This would clearly solve the issue of the relationship between the two systems of law, namely domestic and international. Equally, the interpretation and the application of the law should be consistent with international law.

This article could also have had a second section according to which "The SR (National Council of the SR) can delegate part of the execution of its sovereignty to international bodies". This will probably be required by the accession of the SR to the EU.

The Constitution of the SR lacks the first part of the proposed provision although the 1992 Declaration of the Slovak National Council, before the establishment of the Slovak Republic as an independent state, states that "within interna-

tional relations the Slovak Republic shall obey the rules of international law as well as the ends and principles anchored in the UN-Charter, the CSCE Final Act, the CSCE Charter of Paris for a new Europe and other CSCE documents" (see: Azud, J.: *Záruky bezpečnosti SR*, Slovak Academic Press, Bratislava 1995, p. 9). This is, however, a political commitment.

The doctrine and the practice should further unite in the issue of the interpretation of some sources of law, e.g. decisions of the President of the SR about the delegation of the competence pursuant to art. 102 letter a/Constitution of the SR. A consensus should also be reached in the interpretation of the provision of the Government of the SR No. 419 of May 3, 1993 – Government principles in the conclusions of international treaties.

These are some conclusions and proposals from the examination of the treatment of international treaties in the legal order of the SR.