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THE QUESTION OF THE RANK OF INTERNATIONAL TREATIES IN NATIONAL HIERARCHY OF NORMS

A Theoretical and Comparative Study*

Kemal Gözler**

ABSTRACT: *In this article, the question of place of the international treaties in the national legal hierarchy is examined firstly from a theoretical perspective and later from a comparative perspective. In the first part of the article, concerning the rank of international treaties, four assumptions are asserted: 1) The international treaties ratified by the executive may be on the same level as executive acts. 2) The international treaties ratified by the legislature with an ordinary majority may be on the same level as laws. 3) The international treaties ratified by the legislature with a majority higher than what is required for the adoption of ordinary laws may have an authority superior to laws. 4) The international treaties ratified by the constitutional amending power may be on the same level as the constitution. In the second part of the article, the validity of these assumptions is tested in the light of positive constitutional dispositions of different countries.*

Keywords: international treaties, hierarchy of norms, constitution, laws

ÖZET: *Bu makalede, uluslararası antlaşmaların iç hukuk normlar hiyerarşisindeki yeri sorunu, önce teorik, sonra da karşılaştırmalı açıdan incelenmektedir. Birinci bölümde, uluslararası antlaşmaların normlar hiyerarşisindeki yeri konusunda dört varsayım ileri sürülmektedir: 1) Yürütme organı tarafından onaylanmış uluslararası antlaşmalar, normlar hiyerarşisinde yürütme organının işlemleriyle aynı seviyede bulunur. 2) Yasama organı tarafından adı çoğunlukla onaylanmış uluslararası antlaşmalar, normlar hiyerarşisinde kanunlarla aynı seviyede bulunur. 3) Yasama organı tarafından kanunların kabulü için gerekenden daha yüksek bir çoğunlukla onaylanmış uluslararası antlaşmalar, normlar hiyerarşisinde kanunların üstünde bulunabilir. 4) Anayasada değişiklik yapma iktidarı tarafından onaylanmış uluslararası antlaşmalar, normlar hiyerarşisinde anayasayla aynı seviyede bulunur. Makalenin ikinci bölümünde bu varsayımların geçerliliği çeşitli ülkelerin anayasal düzenlemeleri ışığında incelenmektedir.*

Anahtar Kelimeler: uluslararası antlaşmalar, normlar hiyerarşisi, anayasa, kanun

The question dealt with in this article is that of knowing the rank of international treaties in the hierarchy of norms within domestic legal systems. Do

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international treaties have an authority inferior or superior to laws (statutes)¹ or the same authority as laws? In other words, on which level of the hierarchy of norms, are the international treaties situated?

Before analyzing this question, we should clarify that we treat this question from the standpoint of *internal* legal order. International law is superior to national law from the point of view of *international* law theory. If the question is considered in this respect, it may be asserted that the international treaties have an authority superior to all norms of domestic legal order, including the constitution. In other words, the international treaties are superior to, not only, laws, but also the constitution.

But this assertion is not valid in the perspective of internal legal order because there is a difference between the “internal validity” and “international validity” of a legal norm. In international law, a state is bound by the international treaties concluded by it; a state cannot invoke its internal legal norms, including its constitution to escape from the obligations resulting from these treaties before international court and tribunals. This means that international treaties are superior to all domestic legal norms, including the constitution, according to international law.

However, the same state can continue to apply its constitutional or legal norms contrary to an international treaty within its internal legal order. This fact shows that the internal and international validity of a norm are different from each other, and thus international treaties cannot have any direct and spontaneous authority superior to internal legal norms at least in the domestic plane. For this reason, in a country, for the superiority of the international treaties over internal legal norms, the constitution should prescribe that the international treaties ratified by this country have an authority superior to its laws. Without such a constitutional prescription, the international treaties cannot have superiority over laws. This fact means that the basis of the superiority of international treaties over national laws is the constitution, *i.e.* an internal legal norm, not international law. In other words, in the plane of domestic law, the source of the supremacy of international treaties is the constitution. For this reason, the question of determining the rank of international treaties in the hierarchy of national norms is a question of internal law, especially of constitutional law.

Below, we will examine the place of the international treaties in the national legal hierarchy firstly from a theoretical and later from a comparative perspective. In the first part of the article, we will attempt to develop some assumptions on this issue; in the second, we will try to examine whether our assumptions are confirmed or not by the constitutional dispositions of different countries.

1. In this article, the term “law” is used in the meaning of “statute”, *i.e.* an act of the legislature.

I. THEORETICAL PERSPECTIVE

Before answering the question of knowing the rank of international treaties in the national normative hierarchy, we should differentiate between monistic and dualistic theories concerning the relation between international law and national law.

A. In the countries, such as the United Kingdom, Canada, Australia and the Commonwealth countries, where the *dualistic theory* is followed regarding the relationship between international law and national law, the question of the rank of international treaties in the national normative hierarchy is a meaningless question. This is due to the fact that in dualistic system, the question of hierarchy between international treaties and national norms does not arise since the legal norms provided in the international treaties need to be first transformed into national legal order by means of national norms before they can be applied by national courts. In these countries, national courts apply national norms which transform the international treaties into national legal order, not directly the international treaties. In other terms, at the national level, in the dualistic system, the norms originally included in international treaties and transformed into national legal order are valid as national legal norms, not as international norms.

B. But the question of the rank of international treaties in the national normative hierarchy is posed in countries, such as European and Latin American countries, where *monistic theory* is adopted concerning the relationship between international law and national law. According to this theory, international law and national law are parts of a single legal order. In monistic vision, international treaties ratified by a state become binding at national level as international legal norms, and not as national norms. In other terms, in monistic vision international treaties continue to exist in national legal order as international norms without the need for transformation into national norms. In this system, ratified treaties are directly applicable by national courts, as a part of the national legal order. Therefore, a conflict between an international treaty and national norms can arise before national courts. In the case of such a conflict, which of these rules must be applied by national courts?

To answer this question, national courts must first answer the following question: What is the rank of treaties in the national normative hierarchy?

As is known, in the general theory of law, there are three principles to solve a conflict between norms:

1. If there is a hierarchy between conflicting norms, the conflict is solved according to principle *lex superior derogat legi inferiori* (superior norms suppress inferior norms).

2. If the conflicting norms hold the same rank in normative hierarchy, the conflict will be solved according to the principle *lex posterior derogat legi priori* (later norms suppress earlier norms).

3. If the conflicting norms are laid down at the same time and hold the same rank in normative hierarchy, the conflict will be solved according to principle *lex specialis derogat legi generali* (particular norms suppress general norms).

To solve a conflict between norms by applying these principles, we must previously know the place of international treaties in normative hierarchy. But before this, let us look briefly at the theory of hierarchy of norms. Today it is generally accepted that the legal system is of hierarchical structure, which is called “hierarchy of norms” or “normative hierarchy”. In this hierarchy, there are several levels: On the highest level of this hierarchy is the constitution, on the next level are laws (or legislation), and on the later level are administrative regulations².

There is a “hierarchy of authorities” behind the “hierarchy of norms”. A norm is the meaning of an act of will³. An act of will is laid down by an authority. The rank of this norm in the normative hierarchy depends on the rank of its creator (author, norm-positing authority) in the hierarchy of authorities. A law (statute) is superior to a regulation, because it is laid down by the legislative organ, while the regulation is laid down by an executive or administrative organ. In the same manner, the constitution is superior to laws because it is laid down by the “constituent power” and amended by the “amending power”, *i.e.* the qualified majority (such as 3/5 or 2/3) of the members of parliament, in some countries it is even required that constitutional amendments are ratified by the people, while a law is laid down by an ordinary majority of the Parliament. In this hierarchy, an executive or administrative authority cannot modify a law, because law is an act of the legislative organ which is superior to executive or administrative organs. Likewise, the legislative organ cannot amend a constitution, because the constitution is an act of constituent power or of the amending power which are superior to legislative power.

2. Hans Kelsen, *Introduction to the Problems of Legal Theory* (Translated by Bonnie Litschewski Paulson and Stanley L. Paulson), Oxford, Clarendon Press, 2002, p.63-70.

3. Hans Kelsen, *General Theory of Norms* (Translated by Mischael Hartney), Oxford, Clarendon Press, 1991, p.2.

The place of international treaties in national normative hierarchy must be determined according to the theory of hierarchy of authorities. If an international treaty is ratified by an executive organ, for example by a presidential decree or by a council of ministers' decree, it will hold only a rank equivalent to that of executive regulations in the normative hierarchy. If it is ratified by a legislative organ, it will be on the same level as laws in normative hierarchy. If it is ratified by a majority higher than that required for the adoption of ordinary laws, it will have an authority superior to laws. If it is ratified by the constitutional amending power, it will be on the same level as constitution.

Therefore concerning the place of international treaties in national normative hierarchy, these **four assumptions** can be asserted:

1. The international treaties ratified by the executive may be on the same level as executive acts.
2. The international treaties ratified by the legislature with an ordinary majority may be on the same level as laws.
3. The international treaties ratified by the legislature with a majority higher than what is for the adoption of ordinary laws may have an authority superior to laws.
4. The international treaties ratified by the constitutional amending power may be on the same level as the constitution.

Let us explain our assumptions:

1. The international treaties ratified by the executive may be on the same level as executive acts. Therefore these treaties cannot have an authority superior to executive acts in normative hierarchy. In the case of conflict between a disposition of these treaties and that of executive acts, whichever are more recent prevail according to the principle *lex posterior derogat legi priori*. Hence if a subsequent executive decree contradicts such a treaty, the executive decree will take precedence. In the case of conflict between these treaties and legislative acts, *i.e.* laws, the latter always prevail according to the principle *lex superior derogat legi inferiori*, even if treaties are more recent.

2. The international treaties ratified by the legislature with an ordinary majority may be on the same level as laws. Therefore these treaties have an authority superior to all executive acts. In the case of conflict between these treaties and executive acts, the treaties always prevail according to the principle *lex superior derogat legi inferiori*, even if executive acts are more recent. But these treaties cannot have an authority superior to laws in normative hierarchy. In the case of conflict between these treaties and laws, whichever are more recent prevail according to the principle *lex posterior derogat*

legi priori. Hence if a subsequent law contradicts such a treaty, law will take precedence.

3. The international treaties ratified by the legislature with a majority higher than what is required for the adoption of ordinary laws may have an authority superior to laws. Therefore, these treaties have an authority superior to laws. In the case of conflict between these treaties and laws, treaties always prevail according to the principle *lex superior derogat legi inferiori*, even if laws are more recent. But these treaties cannot be placed on the same level as the constitution. These treaties have an authority superior to laws, but inferior to the constitution. Hence in the case of conflict between these treaties and the constitution, the latter will take precedence.

4. The international treaties ratified by the constitutional amending power may be on the same level as the constitution. Therefore, these treaties have an authority superior to laws. In case of conflict between these treaties and laws, the treaties always prevail according to the principle *lex superior derogat legi inferiori*, even if laws are more recent. But these treaties cannot have an authority superior to the constitution in normative hierarchy. In the case of conflict between a disposition of these treaties and that of the constitution, whichever is more recent prevails according to the principle *lex posterior derogat legi priori*. Hence if a subsequent constitutional disposition contradicts such a treaty, constitutional disposition will take precedence.

II. COMPARATIVE PRACTICE: VERIFICATION OF THE VALIDITY OF OUR ASSUMPTIONS

Let us verify the validity of our assumptions in the light of positive constitutional dispositions of different countries.

A. VERIFICATION OF THE VALIDITY OF OUR FIRST ASSUMPTION

As stated above, according to our first assumption, *international treaties ratified by the executive may hold the same rank as executive acts*. Therefore, these treaties cannot have an authority superior to the executive decrees in normative hierarchy. In the case of conflict between these treaties and executive decrees, whichever are more recent prevail according to the principle *lex posterior derogat legi priori*. Hence if a subsequent executive decree contradicts such a treaty, executive decree will take precedence.

Let us test the validity of our first assumption on the positive law of different countries:

The USA: Executive Agreements.- The Constitution of the United States empowers the president “*by and with Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur*” (Art. II, § 2, cl. 1)⁴. Although the Constitution expressly confers the power to make only “treaties,” in the USA, Presidents historically have the tendency to make international agreements in other forms than treaties without advice and consent of the Senate. These agreements are subsumed under the name “executive agreements”⁵. An executive agreement is defined as “an agreement between the United States and one or more foreign countries entered into by president without ratification by the Senate”⁶. In *United States v. Belmont* (1937) and *United States v. Pink* (1942), The US Supreme Court recognized the validity of the executive agreements put into effect by the President without the participation of Senate⁷.

What is the legal force of executive agreements in the USA? In other words, what is the rank of executive agreements in normative hierarchy of the United States? According to our first supposition, in the USA, executive agreements may hold the same rank as presidential decrees in normative hierarchy. They cannot have the legal authority as the acts of legislative. Executive agreements are always inferior to acts of the Congress. Therefore in the case of conflict between executive agreements and legislative acts, *i.e.* laws, the latter always prevails according to the principle *lex superior derogat legi inferiori*, even if executive agreements are more recent.

In *United States v. Belmont* (1937) and *United States v. Pink* (1942), the US Supreme Court gave a clear answer to the question of conflict between an executive agreement and a state law. The US Supreme Court held that the executive agreements supersede the *state* laws⁸. It is an expected situation be-

4. http://www.archives.gov/exhibits/charters/constitution_transcript.html (last visited 20 December 2015).

5. Laurence H. Tribe, *American Constitutional Law*, New York, Foundation Press, 2000, Vol. I, p.648; John E. Nowak, Ronald D. Rotunda and J. Nelson Young, *Handbook on Constitutional Law*, St. Paul, Minn., West Publishing Co., 1978, p.187; Otis H. Stephens and John M. Scheb, *American Constitutional Law*, Belmont, CA, Wadsworth Publishing, Third Edition, 2003, p.185; Louis Fisher, *American Constitutional Law*, Durham, N.C., Carolina Academic Press, Fifth Edition, 2003, s.288-289.

6. Stephens and Scheb, *op. cit.*, Glossary D-9.

7. In the Belmont case, the Supreme Court stated that “an international compact, as this was, is not always a treaty which requires the participation of the Senate. There are many such compacts, of which a protocol, a *modus vivendi*, a postal convention, and agreements like that now under consideration are illustrations” (301 U.S. 330, 331) (<http://laws.findlaw.com/us/301/324.html>, last visited 24 December 2015).

8. In the Belmont case, the Supreme Court stated that “plainly, the external powers of the United States are to be exercised without regard to state laws or policies. The supremacy of a treaty in this respect has been recognized from the beginning. Mr. Madison, in the Virginia

cause a state has no power in international relations. Therefore, an executive agreement supersedes inconsistent laws of states. But this conclusion is not valid *vis-à-vis* the relation between the executive agreements and federal laws. According to supremacy clause (Article VI, Cl.2), treaties have the same legal force as federal laws⁹. It is often said that, in *United States v. Belmont* (1937) and *United States v. Pink* (1942), the US Supreme Court regarded executive agreements as having a “similar dignity” with treaties¹⁰. In my opinion it is not true because in *United States v. Belmont* (1937) and *United States v. Pink* (1942), the question of conflict between an executive agreement and state law is posed, not that of conflict between an executive agreement and federal law; therefore in these cases, no answer can be found as to the question of conflict between an executive agreement and federal law¹¹. The Supreme Court has not ruled on this question directly up to now¹². As it is said in the Restatement of the Law, 2d, Foreign Relations Law of the United States § 144 (1) (1965),

Convention, said that if a treaty does not supersede existing state laws, as far as they contravene its operation, the treaty would be ineffective. 'To counteract it by the supremacy of the state laws, would bring on the Union the just charge of national perfidy, and involve us in war.' 3 Elliot's Debates 515. And see *Ware v. Hylton*, 3 Dall. 199, 236, 237. And while this rule in respect of treaties is established by the express language of clause 2, article 6, of the Constitution, the same rule would result in the case of all international compacts and agreements from the very fact that complete power over international affairs is in the national government and is not and cannot be subject to any curtailment or interference on the part of the several states. Compare *United States v. Curtiss-Wright Export Corporation*, 299 U.S. 304, 316 et seq., 57 S.Ct. 216, 219. In respect of all international negotiations and compacts, and in respect of our foreign relations generally, *state lines disappear*. As to such purposes the state of New York does not exist. Within the field of its powers, what [301 U.S. 324, 332] ever the United States right-fully undertakes, it necessarily has warrant to consummate. And when judicial authority is invoked in aid of such consummation, *State Constitutions, state laws, and state policies are irrelevant to the inquiry and decision. It is inconceivable that any of them can be interposed as an obstacle to the effective operation of a federal constitutional power*. Cf. *Missouri v. Holland*, 252 U.S. 416, 40 S. Ct. 382, 11 A.L.R. 984; *Asakura v. Seattle*, 265 U.S. 332, 341, 44 S.Ct. 515, 516” (301 U.S. 330, 331, 332) (<http://laws.findlaw.com/us/301/324.html>, last visited 26 December 2015). See Barry E. Carter and Phillip R. Trimble, *International Law*, New York, Aspen Law and Business, 1999, p.228.

9. Article VI, Cl.2: “All treaties made, or shall be made, under authority of the United States, shall be the supreme Law of the Land” (http://www.archives.gov/exhibits/charters/constitution_transcript.html, last visited 20 December 2015).
10. *US v. Pink* (315 US 230): “A treaty is a 'Law of the Land' under the supremacy clause, Art. VI, Cl. 2, of the Constitution. Such international compacts and agreements as the *Litvinov Assignment* have a similar dignity. *United States v. Belmont*, supra, 301 U. S. page 331, 57 S.Ct. page 761. See Corwin, *The President, Office & Powers* (1940), pp. 228-240” (Italics mine) (<http://caselaw.findlaw.com/us-supreme-court/315/203.html>). See Fisher, *op. cit.*, p.289.
11. Paul C. Bartholomew, *Ruling American Constitutional Law*, Littlefield, NJ, Adams & Company, 1970, Vol. I, p.97.
12. Nowak, Rotunda and Young, *op. cit.*, p.190.

executive agreements “supersedes inconsistent provisions of the law of the several states, but does not supersede inconsistent provision of earlier acts of Congress”^{13,14}.

We think that the US practice of executive agreements confirm our first assumption.

B. VERIFICATION OF THE VALIDITY OF OUR SECOND ASSUMPTION

As explained above, according to our second assumption, *international treaties ratified by the legislature with an ordinary majority may be on the same level as laws*. Therefore, these treaties have an authority superior to all executive acts. In the case of conflict between these treaties and executive acts, treaties always prevail according to the principle *lex superior derogat legi inferiori*, even if executive acts are more recent. But these treaties cannot have an authority superior to laws in normative hierarchy. In the case of conflict between these treaties and laws, which is more recent, prevails according to the principle *lex posterior derogat legi priori*. Hence if a subsequent law contradicts such a treaty, law will take precedence.

Let us test the validity of our second assumption on the on the dispositions of constitutions of different countries.

1. Examples Which Confirm Our First Assumption

a) Germany.- The article 59 of the Basic Law of the Federal Republic of Germany of 1949 declares that “treaties which regulate the political relations of the Federation or relate to matters of federal legislation shall require the approval or participation of the appropriate legislative body in the form of a federal law” (Art.59, Par.2)¹⁵. In Germany, “*treaties which regulate the political relations of the Federation or relate to matters of federal legislation*”¹⁶

13. The Restatement of the Law, 2d, Foreign Relations Law of the United States § 144 (1) (1965), cited by Nowak, Rotunda and Young, *op. cit.*, p.190.

14. The State Department admit that an executive agreement cannot be “inconsistent with legislation enacted by the Congress in the exercise of its constitutional authority” (11 FAM 723.2-2(C), Circular 175 Procedure) (<http://www.state.gov/documents/organization/88317.pdf>, last visited 24 January 2016), cited by Fisher, *op. cit.*, p.289.

15. CODICES » Constitutions » English » Europe » Germany (<http://www.codices.coe.int/NXT/gateway.dll/CODICES/constitutions/eng/eur/ger>, last visited 24 January 2016).

16. For determining these treaties, see Jochen Abr. Frowein and Michael J. Hahn, “The Participation of Parliament in the Treaty Process in the Federal Republic of Germany”, in *Parliamentary Participation in the Making and Operation of Treaties: A Comparative Study* (edited by Stefan A. Riesenfeld and Frederick M. Abbott), Dordrecht, Martinus Nijhoff Publishers, 1994, p.61-87.

are put into effect by legislative body in the form of a federal law, according to our second assumption, international treaties *may be on the same level as federal laws* in the German normative hierarchy¹⁷. Therefore, in Germany, these treaties cannot have an authority superior to laws in normative hierarchy. In the case of conflict between these treaties and laws, whichever are more recent prevail according to the principle *lex posterior derogat legi priori*. Hence if a subsequent law contradicts such a treaty, law will take precedence.

b) Italy.- Article 87 (paragraph 8) of the Constitution of the Italian Republic of 22 December 1947¹⁸) grants the President of the Republic the power to ratify international treaties. But the ratification of some international treaties by the President of the Republic requires the previous authorization of the houses (art 80). Article 80 of the 1947 Constitution stipulates that “*the houses authorise through laws the ratification of international treaties which are of a political nature, or which call for arbitration or legal settlements, or which entail changes to national territory or financial burdens or changes in the laws*”¹⁹. In Italy, treaties can be divided into two groups as follows: (1) Treaties which are of a political nature, or which call for arbitration or legal settlements, or which entail changes to national territory or financial burdens or changes in the laws. (2) Other treaties.

The *first group of treaties* is put into effect by the will of the legislature and the President of the Republic. In this process, the legislature (the houses) expresses its will of authorization of ratification in form of law. Since the first group of international treaties acquired the will of the legislature by way of law, the international treaties may have the same legal force as legislative acts, i.e., laws, in Italian normative hierarchy. In the case of conflict between these treaties and laws, whichever is more recent prevails according to the principle *lex posterior derogat legi priori*. Hence if a subsequent law contradicts such a treaty, law will take precedence.

The *second group of treaties* is put into effect by the ratification of the President of the Republic without the any participation of the legislative. Therefore, they may have the same legal force as executive acts, i.e. presidential decrees. In the case of conflict between these treaties and executive acts, whichever is more recent prevails according to the principle *lex posterior derogat legi priori*. Hence if a subsequent presidential act contradicts such a

17. For the opposite view, see Frowein and Hahn, *op. cit.*, p.69). According these authors, “parliament may also determine the rank of treaty provisions in the municipal legal system”.

18. CODICES » Constitutions » English » Europe » Italy

(<http://www.codices.coe.int/NXT/gateway.dll/CODICES/constitutions/eng/eur/ita>, last visited 24 January 2016)

19. *Ibid.*

treaty, the presidential act will take precedence. In this case, a treaty cannot have an authority equal or superior to laws. If there is a conflict between a law and a treaty of the second group, law always prevails even if previous in time.

c) Turkey.- The last paragraph of article 90 of the Turkish Constitution of 1982 stipulates that “*international agreements duly put into effect have the force of law*”²⁰. Therefore, we can say that the international treaties are situated on the same level as laws in Turkish normative hierarchy. This is a coherent solution. Because the basis of the validity of international treaties of Turkish legal order is the will of the legislature which is expressed by the law approving the ratification. This will is expressed by the absolute majority of present members of the Grand National Assembly of Turkey.

d) The USA: Treaty.- The Constitution of the United States empowers the president “*by and with Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur*” (Art. II, § 2, cl. 1). In the USA, to put treaties into effect, the participation of one of the legislative bodies, *i.e.* Senate, is required; furthermore, the participation of the Senate is possible only by the vote of two thirds of the total members of the Senate. The US Constitution does not require the ratification of the treaties by the House of Representatives, the other chamber of the legislative organ. Even if the two thirds of the total members of the Senate is required, the constitutional amendment procedure is not necessary in order to ratify the treaties. Therefore, in the USA, according to our second assumption, the treaties may hold a rank superior to executive acts, but inferior to constitutional norms.

Are treaties on the same level as acts of the legislative, *i.e.* as federal laws in the USA? In the United States, the question of the rank of treaties in the normative hierarchy is answered by the Constitution. The US Constitution provides that “*this Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land...*” (Article VI, Cl.2). From this clause, it is inferred that, treaties have the same legal force as federal laws.

But we cannot give an answer to the question, because in the USA, the treaties are put into effect by the President with the advice and the consent of the Senate, but without the participation of the House of Representatives, the other chamber of Congress.

In conclusion, our second assumption is confirmed by the dispositions of the Constitution of Germany, Italy, Turkey and the USA. In these countries, international treaties are ratified by the ordinary legislature and therefore these

20. https://global.tbmm.gov.tr/docs/constitution_en.pdf (last visited 15 January 2016)

treaties are on the same level as laws in the domestic normative hierarchy. In the case of conflict between these treaties and laws, whichever is more recent prevails according to the principle *lex posterior derogat legi priori*. Hence if a subsequent law contradicts such a treaty, law will take precedence.

2. Examples Which Deny Our Second Assumption

There are some examples²¹ which contradict our second assumption. In these countries, the international treaties are ratified by the ordinary majority of the legislature, but these treaties have a force superior to laws in the normative hierarchy of these countries.

a) Albania.- The Article 122(2) of the Albanian Constitution of 1998 stipulates that “an international agreement ratified by law has priority over the laws of the country that are incompatible with it”²². But “the amendment and repeal of laws approved by a majority of all members of the Assembly is done by the same majority for the purposes of the ratification of an international agreement”. Anyway, Albanian Constitution does not require a majority greater than what is required for the adoption of laws. Therefore Albanian Constitution contradicts our second assumption according to which the international treaties ratified by law should be on the same level as laws.

b) Armenia.- The Article 81 of the Armenian Constitution of 1995 empowers the National Assembly to ratify international treaties. The Article 6(4) of this Constitution states that “international treaties shall come into force only after being ratified or approved... If a ratified international treaty stipulates norms other than those stipulated in the laws, the norms of the treaty shall prevail. International treaties contradicting the Constitution cannot be ratified”²³. Therefore, the international treaties ratified by the ordinary legislature are superior to laws in the Armenian legal order. The Armenian Constitution contradicts our second assumption.

21. When determining these examples, we have much benefited from Kemal Başlar’s following article: Kemal Başlar, “Uluslararası Antlaşmaların Onaylanması, Üstünlüğü ve Anayasal Denetimi Üzerine” [On the Ratification, the Superiority and the Constitutional Review of International Treaties], *Milletlerarası Hukuk ve Milletlerarası Özel Hukuk Bülteni: Prof. Dr. Sevin Toluner’e Armağan* [Bulletin of International Law and International Private Law: Essays in Honor of Prof. Dr. Sevin Toluner], Vol. 24, No. 1-2, Year 2004, p.279-336 (<http://www.anayasa.gen.tr/baslar-90nciMadde.pdf>, last visited 28 January 2016). In this article, the place of international treaties is examined from the comparative perspective.

22. CODICES » Constitutions » English » Europe » Albania (<http://www.codices.coe.int/NXT/gateway.dll/CODICES/constitutions/eng/eur/alb>, last visited 24 January 2016).

23. CODICES » Constitutions » English » Europe » Armenia (<http://www.codices.coe.int/NXT/gateway.dll/CODICES/constitutions/eng/eur/arm>, last visited 24 January 2016).

c) Croatia.- The Article 141 of the Croatian Constitution (consolidated version of 2010) stipulated that “international agreements concluded and ratified in accordance with the Constitution and made public, and which are in force, shall be part of the internal legal order of the Republic of Croatia and *shall be above law in terms of legal effects*”²⁴.

d) Czech Republic.- Article 10 of the Constitution of the Czech Republic of 16 December 1992 stipulates that “promulgated treaties, to the ratification of which Parliament has given its consent and by which the Czech Republic is bound, form a part of the legal order; if a treaty provides something other than that which a statute provides, the treaty shall apply”²⁵.

e) Moldavia.- According to the Moldavian Constitution of 19 July 1994 (Article 4, paragraph 2), in the case of conflict between “treaties signed by the Republic of Moldova and her own national laws, priority shall be given to international treaties”²⁶.

f) Russia.- The Article 15(4) of the Constitution of the Russian Federation of 12 December 1993 provides that “generally accepted principles and rules of international law and international treaties of the Russian Federation shall be an integral part of its legal system. If an international treaty of the Russian Federation establishes rules, other than provided for by the law, the rules of the international treaty shall be applied”²⁷.

g) France.- Article 55 of the French Constitution of 1958 declares that “treaties or agreements duly ratified or approved shall, upon publication, prevail over acts of Parliament, subject, with respect to each agreement or treaty, to its application by the other party”²⁸. According to the Article 53 of this Constitution, “peace treaties, trade agreements, treaties or agreements relating to international organization, those committing the finances of the State, those

24. CODICES » Constitutions » English » Europe » Croatia
(<http://www.codices.coe.int/NXT/gateway.dll/CODICES/constitutions/eng/eur/cro>, last visited 29 January 2016).

25. CODICES » Constitutions » English » Europe » Czech Republic
(<http://www.codices.coe.int/NXT/gateway.dll/CODICES/constitutions/eng/eur/cze>, last visited 29 January 2016).

26. CODICES » Constitutions » English » Europe » Moldova
(<http://www.codices.coe.int/NXT/gateway.dll/CODICES/constitutions/eng/eur/mda>, last visited 29 January 2016).

27. CODICES » Constitutions » English » Europe » Russia
(<http://www.codices.coe.int/NXT/gateway.dll/CODICES/constitutions/eng/eur/rus>, last visited 29 January 2015)

28. CODICES » Constitutions » English » Europe » France
(<http://www.codices.coe.int/NXT/gateway.dll/CODICES/constitutions/eng/eur/fra>, last visited 24 January 2016).

modifying provisions which are the preserve of statute law, those relating to the status of persons, and those involving the ceding, exchanging or acquiring of territory, may be ratified or approved only by an Act of Parliament”²⁹.

The fact that treaties ratified by an act of Parliament prevail over acts of Parliament is a logical contradiction. This prevalence can disrupt the inner coherence of the legal order. Probably in order to prevent such incoherency, French Constitution, in its article 54, provides a mechanism of judicial review of the international treaties. If the Constitutional Council rules that an international treaty is contrary to the Constitution, this treaty may be only ratified after amending the Constitution³⁰.

As explained above, according to the constitutions of these countries, all international treaties, whatever their subject may be, ratified by the Parliament or after the authorization of the Parliament prevail over national laws.

* * *

Whereas, in the countries we will see below, the constitutions confer a rank higher than laws, not to all treaties, but only those relating human rights and freedoms. Now let us give some examples of these constitutions.

h) Bosnia and Herzegovina.- The Article II(2) of the Constitution of Bosnia and Herzegovina of 1 December 1995 sets down that “the rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. *These shall have priority over all other law*”³¹.

i) Romania.- The Constitution of Romania of 8 December 1991 specifies, in article 20(2), that “where any inconsistencies exist between the covenants and treaties on fundamental human rights to which Romania is a party, and the national laws, the international regulations shall take precedence, save

29. *Ibid.*

30. “Article 54 - If the Constitutional Council, on a referral from the President of the Republic, from the Prime Minister, from the President of one or the other Houses, or from sixty Members of the National Assembly or sixty Senators, has held that an international undertaking contains a clause contrary to the Constitution, authorization to ratify or approve the international undertaking involved may be given only after amending the Constitution” (*Ibid.*).

31. CODICES » Constitutions » English » Europe » Bosnia and Herzegovina (<http://www.codices.coe.int/NXT/gateway.dll/CODICES/constitutions/eng/eur/bih>, last visited 4 January 2016).

where the Constitution or national laws comprise more favorable provisions”³².

j) Turkey.- The Constitution of the Republic of Turkey of 1982, in the last sentence³³ of the last paragraph of the article 90, states that “in the case of a conflict between international agreements, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail”³⁴.

k) Slovakia.- Before 2001, the Article 11 of the Constitution of the Slovak Republic set down that “international instruments on human rights and freedoms ratified by the Slovak Republic and promulgated under statutory requirements shall take precedence over national laws provided that the international treaties and agreements guarantee greater constitutional rights and freedoms”³⁵. But this article was repealed by the Constitutional Law No. 90/2001³⁶.

Therefore, only three examples remain for the category of the precedence of the international treaties concerning the human rights over the national laws: Bosnia and Herzegovina, Romania and Turkey.

Criticism

In our opinion, the solutions of those two groups of countries are subjected to severe criticism. It seems contradictory to place the international treaties on a level superior to that of laws in the national normative hierarchy because the basis of the validity of the international treaties and that of national laws are the same: The will of the legislature. And this will is expressed by the same majority of the Parliament. If there is no hierarchy between the wills on the fundament of two acts, it will be impossible to establish a hierarchy between them.

To confer a value superior to laws to the international treaties may disturb the inner coherence of national normative hierarchy, because in this way, a

32. CODICES » Constitutions » English » Europe » Romania

(<http://www.codices.coe.int/NXT/gateway.dll/CODICES/constitutions/eng/eur/rom>, last visited 6 January 2016).

33. This sentence added by constitutional law of 7 May 2004, no 5170.

34. https://global.tbmm.gov.tr/docs/constitution_en.pdf (last visited 10 January 2016).

35. CODICES » Constitutions » English » Europe » Slovakia » Popup note

(<http://www.codices.coe.int/NXT/gateway.dll/CODICES/constitutions/eng/eur/SVK/pop00005.htm>, last visited 25 December 2015).

36. *Ibid.*

new hierarchical category occupied by international treaties has been established. A malevolent government can bind the hands of future government through international treaties. Such a government, first, concludes international treaties with other states on various issues; then it submits them to approval of the parliament by the majority of the members present. If such treaties prevail over the laws, future legislatures can not enact statutes contrary to these treaties. In such situation, the conflict between laws and treaties is resolved in favor of treaties, following the principle *lex superior derogat legi priori*. The treaties prevail over laws, even if laws are enacted later in time.

The binding of the future legislature by the present legislature is not logical. The ordinary majority of the parliament is not superior to the ordinary majority of the future parliament.

Even if the government is not malevolent, the introduction of a new level between the constitution and laws in the hierarchy of norms can compromise the integrity of internal legal order because in such a situation, there will be two kinds of norms with which the laws must comply: The norms of the constitution and those of international treaties. The Constitution and international treaties may contain different and conflicting norms.

Probably in order to prevent this conflict, the French Constitution of 1958 (Article 54), the Armenian Constitution of 1995 (Article 6, Paragraph 5) and the Moldavian Constitution of 1994 (Article 8, Paragraph 2) tried to hinder the ratification of international treaties contrary to themselves. These constitutions provide a mechanism of judicial review of conformity of international treaties to the constitution and previously require a constitutional amendment in case the constitutional court declared that the treaties were contrary to the constitution.

According to the Article 54 of the French Constitution of 1958, “if the Constitutional Council, on a referral from the President of the Republic, from the Prime Minister, from the President of one or the other Houses, or from sixty Members of the National Assembly or sixty Senators, has held that an international undertaking contains a clause contrary to the Constitution, authorization to ratify or approve the international undertaking involved may be given only after amending the Constitution”³⁷. By the mechanism set down by Article 54, the ratification of international treaties contrary to the Constitution can be prevented or contrariety to the Constitution can be removed by amending the Constitution. Thus the consistency of the legal order is ensured.

37. CODICES » Constitutions » English » Europe » France
(<http://www.codices.coe.int/NXT/gateway.dll/CODICES/constitutions/eng/eur/fra>, last visited 24 January 2016).

For the same reason, the Armenian Constitution of 1995 (Article 6, Paragraph 5) provides that “international treaties contradicting the Constitution cannot be ratified”³⁸. This disposition aims to ensure the coherence of the hierarchy of norms.

Again, for the same reason, the Moldavian Constitution of 1994 (Article 2, Paragraph 2) stipulates that “the coming into force of an international treaty containing provisions contrary to the Constitution shall be preceded by a revision of the latter”³⁹. In the same way, the Constitution empowers the Constitutional Court to review the constitutionality of the international treaties.

In my view, the above dispositions of French, Armenian and Moldavian Constitutions are a logical and tenable solution to the problem of inconsistency of internal legal order due to the prevalence of international treaties over laws. But, excepting these three constitutions, other constitutions which give primacy over laws do not contain such a solution.

C. VERIFICATION OF THE VALIDITY OF OUR THIRD ASSUMPTION

As explained above, according to our third assumption, *international treaties ratified by the legislature with a majority higher than what is required for the adoption of ordinary laws may have an authority superior to laws*. Therefore these treaties have an authority superior to laws. In the case of conflict between these treaties and laws, treaties always prevail according to the principle *lex superior derogat legi inferiori*, even if laws are more recent. But these treaties cannot be placed on the same level as the constitution. These treaties have an authority superior to laws, but inferior to the constitution. Hence in the case of conflict between these treaties and the constitution, the latter will take precedence.

As the examples which confirm our assumption, we can give constitutional dispositions of the countries below:

1. The Netherlands.- Article 94 of the Constitution of the Netherlands of 1983 stipulates that “statutory regulations in force within the Kingdom shall not be applicable if such application is in conflict with provisions of treaties

38. CODICES » Constitutions » English » Europe » Armenia (<http://www.codices.coe.int/NXT/gateway.dll/CODICES/constitutions/eng/eur/arm>, last visited 24 January 2016).

39. CODICES » Constitutions » English » Europe » Moldova (<http://www.codices.coe.int/NXT/gateway.dll/CODICES/constitutions/eng/eur/mda>, last visited 29 January 2016).

that are binding on all persons or of resolutions by international institutions”⁴⁰. Therefore in the Netherlands, international treaties have an authority superior to laws. But according to the Article 91(3) of the Constitution, “any provisions of a treaty that conflict with the Constitution or which lead to conflicts with it may be approved by the Houses of the States General only if at least two-thirds of the votes cast are in favour”⁴¹.

Article 137 of the Constitution provides that a majority of at least two-thirds of the votes cast in the Parliament is required for adoption of the constitutional amendments. The majority for the ratification of international treaties and the majority for adoption of constitutional amendments are the same: two-thirds of the votes cast. Looking at this fact, for a moment, the Constitution of the Netherlands may be considered as an example confirming our fourth assumption, not the third. But this consideration is not exactly true. In the Netherlands, it cannot be said that this kind of international treaties are ratified by the procedure of constitutional amendment because in the procedure of constitutional amendment, the dissolution and reelection of the Lower House is necessary following paragraphs 3 and 4 of the Article 137 of the Constitution. On the other hand the dissolution and reelection of the House is not necessary for the ratification of international treaties.

The example of the Netherlands confirms our third assumption: The international treaties ratified by the legislature with a majority higher than what is required for the adoption of ordinary laws may have an authority superior to laws in normative hierarchy.

2. Portugal.- According to the Constitution of Portugal of 1976 (article 279/4), “if the Constitutional Court pronounces the unconstitutionality of any rule contained in a treaty, the said treaty shall only be ratified if the Assembly of the Republic passes it by a majority that is at least equal to two thirds of all Members present and greater than an absolute majority of all the Members in full exercise of their office”⁴². In Portugal, the procedure of the ratification of such international treaties (art.279/4) resembles that of the adoption of constitutional amendments (art.286). But this similarity is not complete. For example, in the procedure of the ratification of such international treaties, the quorum for decision (two thirds) is calculated out of members present (art. 279/4),

40. <https://www.government.nl/documents/regulations/2012/10/18/the-constitution-of-the-kingdom-of-the-netherlands-2008> (last visited 8 January 2016).

41. <https://www.government.nl/documents/regulations/2012/10/18/the-constitution-of-the-kingdom-of-the-netherlands-2008> (last visited 8 January 2016).

42. https://www.constituteproject.org/constitution/Portugal_2005.pdf (last visited 30 December 2015).

whilst in the procedure of constitutional amendment, the quorum for decision (two third) is calculated out of all the Members in full exercise of their office (art. 286)⁴³.

3. Georgia.- Article 6(2), of the Constitution of Georgia of 24 August 1995 stipulates that “an international treaty or agreement of Georgia unless it contradicts the Constitution of Georgia, the Constitutional Agreement, shall take precedence over domestic normative acts”⁴⁴. According to article 65(1) of the same Constitution, “the Parliament of Georgia by the majority of the *total number* of the members of the Parliament shall ratify, denounce and annul the international treaties and agreements”⁴⁵. On the other hand for the adoption of ordinary laws, “the majority of the members of the Parliament *present*” is necessary. Therefore, the majority for the ratification of international treaties is higher than what is required for adoption of ordinary laws.

The examples of Netherlands, Portugal and Georgia confirm our third assumption. The international treaties ratified by a majority higher than what is required for ordinary laws have an authority higher than that of laws in the normative hierarchy. This a logical solution.

D. VERIFICATION OF THE VALIDITY OF OUR FOURTH ASSUMPTION

Let us remind our fourth assumption: *The international treaties ratified by the constitutional amending power may be on the same level as constitution, in the national normative hierarchy.* Therefore the treaties ratified by the amending power, have an authority superior to laws. In the case of conflict between these treaties and laws, treaties always prevail according to the principle *lex superior derogat legi inferiori*, even if laws are more recent. But these treaties cannot have an authority superior to the constitution in normative hierarchy. In the case of conflict between a disposition of these treaties and that of the constitution, whichever is more recent prevails according to the principle *lex posterior derogat legi priori*. Hence if a subsequent constitutional disposition contradicts such a treaty, constitutional disposition will take precedence.

The Austrian, Finland and Greek Constitutions confirm our fourth assumption:

43. *Ibid.*

44. http://www.parliament.ge/files/68_1944_951190_CONSTIT_27_12.06.pdf (last visited 26 December 2015).

45. *Ibid.*

1. Austria.- The Austrian Constitution provides the ratification of some treaties following constitutional revision. The extent of these treaties is determined differently before and after 2008.

Before 2008.- Before the constitutional amendment of 2008, the Austrian Constitution provided that the international treaties modifying the Constitution can be ratified by “the House of Representatives only in the presence of at least half the members and by a two thirds majority of the votes cast” (art.50(3)⁴⁶ in pursuance of art.44(1)⁴⁷). This procedure is that of constitutional revision. The international treaties ratified following this procedure become a part or supplement of the Constitution. In such a system, the international treaties ratified by the procedure of constitutional revision shall prevail over ordinary laws.

After 2008.- The constitutional amendment of 2008 modifying article 50⁴⁸, ended the way of ratification of international treaties by the procedure of constitutional revision (*i.e.* ratification by “the House of Representatives in the presence of at least half the members and by a two thirds majority of the votes cast”). According to the new version of the Article 50(4), “treaties by which the contractual bases of the European Union are modified”⁴⁹ “may only be concluded with the approval of the National Council and the approval of the Federal Council. These resolutions each require the presence of at least half of its members and the majority of two thirds of the votes cast”⁵⁰.

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46. Austrian Constitution of 1920, Article 50(3): “The provisions of Article 42 (1) to (4) and, *should constitutional law be modified or complemented by the treaty*, the provisions of Article 44 (1) apply analogously to resolutions of the House of Representatives in accordance with Paragraphs (1) and (2). In a vote of sanction adopted pursuant to Paragraph (1), such treaties or such provisions as are contained in treaties shall be explicitly specified as ‘constitutionally modifying’” (Version before 2008) (<http://www.servat.unibe.ch/icl/au00000.html>, last visited 20 December 2015).
47. Austrian Constitution of 1920, Article 44(1): “Constitutional laws or constitutional provisions contained in simple laws can be passed by the House of Representatives only in the presence of at least half the members and by a two thirds majority of the votes cast, they shall be explicitly specified as such” (Version before 2008) (<http://www.servat.unibe.ch/icl/au00000.html>, last visited 20 December 2015).
48. *Datum der Kundmachung 04.01.2008; Bundesgesetzblatt Nr. GBBl. I Nr. 2/2008;* (http://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2008_I_2/BGBLA_2008_I_2.pdf, last visited 20 December 2015).
49. Article 50(1)2: “State treaties by which the contractual bases of the European Union are modified” (https://www.constituteproject.org/constitution/Austria_2009.pdf, last visited 20 December 2015).
50. Article 40(4): “Notwithstanding Art. 44 para 3 state treaties according to para 1 subpara 2 may only be concluded with the approval of the National Council and the approval of the Federal Council. These resolutions each require the presence of at least half of its members and the majority of two thirds of the votes cast” (https://www.constituteproject.org/constitution/Austria_2009.pdf, last visited 24 December 2015).

2. Finland.- Section 94, paragraph 2, of the Constitution of Finland of 11 June 1999, states that “a decision concerning the acceptance of an international obligation or the denouncement of it is made by a majority of the votes cast. However, if the proposal concerns the Constitution or an alteration of the national borders, or such transfer of authority to the European Union, an international organisation or an international body that is of significance with regard to Finland’s sovereignty, the decision shall be made *by at least two thirds of the votes cast*”⁵¹. According to the Section 73 of the Constitution of Finland, the same majority is necessary for the adoption of constitutional amendment. Therefore, in Finland, the international treaties ratified by at least two thirds of the votes cast in the Parliament may have a force superior to the ordinary laws.

3. Greece.- According to the Article 28(2) of the Greek Constitution of 1975, the international treaties recognizing the competence of the international organizations must be ratified by a *majority of three-fifths of the total number of Members of Parliament*⁵². This majority is the same majority that is required for the constitutional amendment following Article 110. This kind of treaties may bear the same rank as the Constitution.

51. “Section 94 - Acceptance of international obligations and their denouncement

The acceptance of the Parliament is required for such treaties and other international obligations that contain provisions of a legislative nature, are otherwise significant, or otherwise require approval by the Parliament under this Constitution. The acceptance of the Parliament is required also for the denouncement of such obligations.

A decision concerning the acceptance of an international obligation or the denouncement of it is made by a majority of the votes cast. However, if the proposal concerns the Constitution or an alteration of the national borders, or such transfer of authority to the European Union, an international organisation or an international body that is of significance with regard to Finland’s sovereignty, the decision shall be made by at least two thirds of the votes cast (1112/2011, entry into force 1.3.2012).

An international obligation shall not endanger the democratic foundations of the Constitution. (1112/2011, entry into force 1.3.2012)”

(<http://www.finlex.fi/en/laki/kaannokset/1999/en19990731.pdf>, last visited, 5 January 2016).

52. “Article 28(2) - Authorities provided by the Constitution may by treaty or agreement be vested in agencies of international organizations, when this serves an important national interest and promotes cooperation with other States. A majority of three-fifths of the total number of Members of Parliament shall be necessary to vote the law sanctioning the treaty or agreement”. (<http://www.hri.org/docs/syntagma/>, last visited 12 January 2016).

On the other hand, according to the Article 28(3) of the Greek Constitution⁵³, the international treaties restricting the exercise of national sovereignty should be ratified by the absolute majority of the *total number of members of Parliament*; whilst only the absolute majority of the members *present* is required for the adoption of ordinary laws (art.67). Therefore we can assert that the international treaties restricting the exercise of national sovereignty and ratified by the absolute majority of the *total number of members of Parliament* shall prevail over ordinary laws.

The above stipulations of the Austrian, Finland and Greek Constitutions confirm our fourth assumption. In these countries, some international treaties are ratified by the same majority of the parliament for the adoption of constitutional amendment. This kind of international treaties is located at the same level as the constitution in the national normative hierarchy. These treaties may perfectly have an authority superior to the ordinary laws, even if they are more recent. It is a logical interference. Since the will under the validity of these international treaties is stronger than that under the validity of ordinary laws, these treaties shall be superior to the laws.

Concerning our fourth assumption, it may be observed that in some countries, before the ratification of the international treaties which are declared contrary to the constitution by the constitutional court, a constitutional amendment is required on this point. For example, Article 95 of the Spanish Constitution of 1978 states that “the conclusion of an international treaty containing stipulations contrary to the Constitution shall require prior constitutional amendment. The Government or either House may request the Constitutional Court to declare whether or not such a contradiction exists”. As it is explained above, the similar dispositions exist also in the French Constitution 1958 (art.56), the Armenian Constitution of 1995 (art.6/5) and the Moldavian Constitution of 1994 (art. 135). In these countries, the necessity of a previous constitutional amendment can be interpreted as a sign of the fact that the will under the validity of these international treaties is stronger than that under the validity of the ordinary laws.

53. “Article 28(3) - Greece shall freely proceed by law passed by an absolute majority of the total number of Members of Parliament to limit the exercise of national sovereignty, insofar as this is dictated by an important national interest, does not infringe upon the rights of man and the foundations of democratic government and is effected on the basis of the principles of equality and under the condition of reciprocity” (<http://www.hri.org/docs/syntagma/> last visited 12 January 2016).

CONCLUSION

Although, they are contrary examples (Albania, Armenia, Croatia, Czech Republic, Moldavia, Russia), our four assumptions on the rank of international treaties in the hierarchy of norms are generally confirmed by the constitutions of different countries. We can conclude that: 1) The international treaties ratified by the executive may be on the same level as executive acts. 2) The international treaties ratified by the legislature with an ordinary majority may be on the same level as laws. 3) The international treaties ratified by the legislature with a majority higher than that required for the adoption of ordinary laws may have an authority superior to laws. 4) The international treaties ratified by the constitutional amending power may be on the same level as the constitution.

In the countries such as Albania, Armenia, Croatia, Czech Republic, Moldavia and Russia, the fact that the international treaties ratified by the legislature with an ordinary majority have an authority superior to laws may be considered as “irrationality”, because the basis of the validity of the international treaties and that of national laws are the same: The will of the legislature. In such countries, as France, Armenia and Moldavia, it would be appropriate to establish a constitutionality review of the treaties before their ratification by the parliament. Without establishing such review, directly conferring a supremacy over laws to international treaties may disturb the inner coherence of national normative hierarchy. For this reason, the dispositions of the Albanian, Croatian, Czech and Russian Constitutions are debatable.

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