European and International Law

International Legal Norms in Macedonia's Domestic Law

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Abstract: In the Republic of Macedonia, international treaties ratified in accordance with the Constitution are considered part of the internal legal order and cannot be changed by an act of Parliament. This solution confirms the principle that international treaties have more legal authority than all the other legal acts, with the exception of the Constitution. This article aims to give an insight on the constitutional provisions that regulate the position of international treaties in the Macedonian legal order. It identifies its advantages and shortcomings and offers some solutions that might be taken into account by the lawgiver in the future. The article also analyses the profound impact that the European Convention on Human Rights has exerted on the substantial nature of the catalogue of fundamental rights and freedoms prescribed in the Constitution of the Republic of Macedonia.

Keywords: Constitution; international treaty; ratification; hierarchy of norms; European Convention on Human Rights

1. Introduction

In their attempts to create a viable constitutional organization of the state powers, after the collapse of the socialist system the new East European democracies, began to reinstall the universal values of the classical constitutional law (the principle of the rule of law, the separation and balance of state powers among the legislature, the executive and judiciary, the political pluralism as the fundamental basis for a free and democratic society, free market economy etc.). These changes have also included the gradual opening of their internal legal systems and their

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adaptation to the dynamic developments in the European and international law. The protection of the human rights has been of profound importance in this context and it has become one of the most critical conditions for the new democracies in their accession to the new regional and global legal order (De Schutter , 2010, pp. 23-25).

The contemporary constitutions regulate the relationship between the international legal order and the internal one and the procedures that ensure the compatibility between the legal norms of the two legal orders. This relationship is evidenced by the way constitutions achieve the process of incorporation of norms of international law in the domestic legal order (Anastasi, 2007, pp. 12-13). In order to accomplish this, it is necessary that the norms of international law become part of the domestic law of a state. From the legal-technical perspective, there are two constitutional modalities for the implementation of the international law in the national legal order: 1) the automatic internalization, i.e. the direct application of the international law in the domestic legal order, which does not require the adoption of additional measures for its practical implementation in the internal legal order (monism)[1]; and 2) the legislative transformation, the indirect application of the international law requires the adoption of a legislative act through which the provisions of an international treaty are accepted in the internal legal order (dualism) (Gjuro-Degan, 2011, pp. 14-20) (Cassese, pp. 168-171).

[1] Generally speaking, the monist conception consists of the fact that the domestic law and international law are not two different legal orders, but two integral components of the same general order. Nevertheless, in the contemporary circumstances, as a reflection of dynamic processes of European, North Atlantic and global integration, the monist circles are dominated by the tendency of overestimation of the role of international law, claiming that its nonobservance could open the road to anarchy and lead to the clash of hundreds systems of internal law of different states. The dualist conception consists on a different observation of the relationship between international and domestic law. They are considered two completely separated domains. Domestic and international law are created on the basis of the coexistence of these two separate legal orders and they differ from each other regarding their legal sources, relations they regulate and their subjects. In this context, legal sources of domestic law include general legal acts, such as: constitutional and statutory acts; whereas the legal sources of international law include international treaties and custom. In addition, the domestic law regulates the legal relations mainly in the internal plan, with natural and juristic personas as its main subjects, whereas international law mainly regulates legal relations in international plan, with states and international organizations as its main subjects. The dualist doctrine excludes all risks of the conflict between domestic and international legal norms and maintains that there is no need to affirm the supremacy of international law over the domestic law and vice versa. They exist in parallel and none has supremacy.

2. The Legal Position of International Treaties in the Constitutional Order of the Republic of Macedonia

The constitutional law determines the position of the norms of international law in the hierarchical structure of the internal constitutional order of a state. As a matter of fact, constitutional law serves as a "connecting bridge" between international and the municipal law of a state. The relationship that an international treaty creates with the domestic law depends on the constitution of the state that has signed the respective treaty. Therefore, it is a necessity to refer to the constitutional norms of a specific state in order to draw valid conclusions on the relationship of the international and domestic law. (Gruda, 2007, p. 34) Likewise, the Constitution of the Republic of Macedonia, adopted on 17 November 1991, contains provisions that regulate the relationship between international and domestic law. These provisions are located in the first part (Fundamental provisions) and the sixth part (International relations). The former has a more general character and the latter a more specific one. For a general thematic treatment of the status of international law as well as the legal position of international treaties, including the legal position of the European Convention on Human Rights and Basic Freedoms in correlation with constitutional order of the Republic of Macedonia, Article 8 (paragraph 1, clause 1 and 11), as well as Article 118 and 119 of the Constitution of the RM, have a particular importance.

First, the fundamental rights and freedoms of man and citizen, recognized in international law and included in the Constitution (Article 8, paragraph 1, clause 1 of the Constitution of the Republic of Macedonia). This provision implies that the international law of human rights[1] has served as a measure as well as guiding pattern for the normative text of the Constitution of the RM in the regulation of the catalogue of fundamental rights and freedoms of man and citizen (De Schutter, 2010, pp. 49-51). The constitutional regulation of human rights and freedoms in post-communist Macedonia can be qualified and treated as unification of what is

[1] The growing consciousness for the human rights after the Second World War contributed to the adoption of a considerable number of international treaties related to the protection of human rights and freedoms. In this respect, with the aim of protection the human rights and freedoms on international plane the new applicative discipline of "International Human Rights Law" was created. This includes a body of legal principles and rules that are part of international treaties (conventions, covenants), which create obligations on states, to respect, protect and guarantee rights and freedoms of man and citizen in their territories in conformity with universal legal values. These international documents set the fundamentals of the functioning of global politics, as well as the standards of conduct of state authorities and their political legitimacy.

generally accepted as essential in most international instruments for human rights and in the constitutions of the majority of western countries.

Second, the respect for the generally accepted norms of international law is a fundamental value of the constitutional order of the Republic of Macedonia (article 8, paragraph 1, clause 11 of the Constitution of the RM). This means that the Republic of Macedonia has undertaken the duty to respect the sources of international law: 1) international treaties; 2) international customs; 3) the general principles of the law recognized by civilized nations; 4) judicial decisions; 5) the legal doctrine or teachings of the most highly qualified scholars of the various nations (Brownlie, 1998, pp. 3-4) (Shaw, 2008, pp. 69-71). Moreover, the generally recognized norms of international law are: the UN Charter (1945), the Universal Declaration of Human Rights (1948), international conventions on human rights, international conventions that stipulate rules for the settlement of disputes among states; international conventions that prohibit genocide, war crimes or crimes against humanity; the Statute of the Nuremberg International Military Tribunal; the Statute of International Criminal Court signed in Rome in 1998, etc. (Brownlie & Goodwin-Gill, 2002, p. 10). These generally recognized norms of international law are direct sources of constitutional law, because they are stipulated as fundamental values of the internal constitutional order and they have superior legal effect on the content of the internal constitutional order; moreover, they have peremptory character (ius cogens)[1] for Macedonia and all other states in the world (Jennings & Watts, 1992, pp. 7-8).

Consequently, these norms cannot be altered with internal legal provisions, or with bilateral treaties. For instance, the bilateral treaty between the Republic of Macedonia and the USA signed in 2003 is null (void) from a legal perspective because, according to it, Macedonia assumed the obligation not to extradite members of US armed forces to the International Criminal Court in The Hague if they commit genocide, war crimes or crimes against humanity (Skaric, 2009, p. 73). Finally, the generally recognized norms of international law are the basis for the survival and development of the international community. Hence, they are peremptory norms for all states, regardless of whether or not they accept them. These norms on one hand create the relationship between internal and international

[1] Jus cogens is a body of the norms of international law, customary or contractual, from which no derogation is permitted and which can be modified only by subsequent norms having the same character. Their nonperformance or fraudulent conduct is an international delict, and the legal transactions that are in breach of peremptory norms legally are null and void.

law, and on the other they influence the interdependence of democracy, nation-state and globalization (Skaric, 2009, p. 73).

Third, 'the international treaties[1] *ratified*[2] *in accordance with the Constitution are part of the internal legal order and cannot be changed by an act of Parliament'* (Article 118 of the Constitution of the RM). This provision confirms the principle that the Constitution retains its legal superiority over all other legal acts, including international treaties ratified by an act of Parliament. Indeed, this constitutional solution gives to ratified international treaties more legal authority than all the other legal acts (with the exception of the Constitution) and these international treaties cannot be amended with other legislative acts. Clearly, in the hierarchical structure of the constitutional order of the Republic of Macedonia, international treaties take a specific position; they are above legal acts, but below constitutional acts. Hence, inside the framework of the constitutional order of the Republic of Macedonia the legal force of international treaties is sub-constitutional and supra-statutory. This means that international treaties have legal primacy over all legislative corpus of internal law of the state, including the existing legal acts and the future ones (*the principle of primacy of international treaties over national legislation*) (Aust, 2000, p. 81). This approach is reflected in The Law on Courts of the Republic of Macedonia' adopted in 2006, according to which: "*when the court deems that the law that is to be applied in the specific case is not in compliance with the provisions of an international treaty ratified in conformity with the Constitution, it shall apply the provisions of the international agreement provided that they are directly applicable*" (Article 18, paragraph 4). In addition, 'The Law on Courts of the RM' entitles courts to use "the exception of unconventionality" (exception d'inconventionnalité) while delivering decisions in specific cases. This expression indicates that a court will not apply a legal act in a

[1] According to Article 2 of Law on Conclusion, Ratification and Enforcement of International Treaties of the RM (Official Gazette of the RM, no. 5/1998), as international treaty is considered the treaty signed by the Republic of Macedonia in written form with one or more countries or international organizations, which determines the rights and obligations for the state, in accordance with the Constitution of the RM and the international law, irrespective of whether it is stipulated in one or more mutually tied documents. It is not considered international treaty, an act concluded by the competent state authorities of the Republic of Macedonia for the enforcement of an international treaty that does not create new obligations for the state.

[2] The act of ratification is characterized by the interference of international law and domestic law, i.e. the creation of a reciprocal relationship between them. (Klabbers, 1996, pp. 15-38). Ratification is the final step of the process through which a treaty signed earlier gets approval from Assembly as the most important state institution. The Vienna Convetion on the Law of Treaties (1969) defines ratification as an "*international act so named whereby a State establishes on the international plane its consent to be bound by a treaty*" (Article 2).

specific case because of its noncompliance with the provisions of an international treaty. In this context, every judge when confronted with laws he deems to be contrary to an international treaty, he is bound not to apply them, invoking instead the provisions of the international treaty. Furthermore, the courts of the RM are entitled in specific cases to enforce the final and effective decisions of the European Court for Human Rights, the International Crime Tribunal or of any other court whose competence has been recognized by the Republic of Macedonia, provided that the respective decisions can be directly applied.[1] (Article 18, paragraph 5). The European Convention for the Protection of Human Rights and Fundamental Freedoms adopted in 1950 by the Council of Europe and the decisions of the European Court of Human Rights are considered as internal sources of the constitutional law of the Republic of Macedonia, and as such they serve as mechanisms for the settlement of disputes between the Republic of Macedonia as state and its citizens, in cases when their rights and freedoms have been violated by final and enforceable decisions of the courts of the Republic of Macedonia.

A disadvantage of the Constitution of RM is that it does not expressly provide any competence to the Constitutional Court of the RM to review the constitutionality of laws that ratify international treaties. As a result, the Constitutional Court for more than a decade has rejected the initiatives for revision of the laws that ratify international treaties. In order to eliminate this constitutional omission (*lacuna constitutionalis*), it is recommended that the constitution-maker supplement Article 110 of the Constitution with a constitutional amendment[2], which will transpose the catalogue of the court's jurisdiction with an innovative competence, that of *ex ante* control of the preliminary compliance of international treaties with the text of the constitution. There is no doubt that the *ex ante* control by the Constitutional Court has a preventive function, since it prevents the unconstitutionality of the content of the international treaty, before its ratification by the Assembly. This model is applied in France, Bulgaria, Spain, Hungary, Portugal, Albania etc. Another disadvantage of the Constitution of the RM is that it has not entitled the

[1] A foreign court decision will not be recognized if the legal effect of its recognition is contrary to the public order of the Republic of Macedonia (Article 107 of the Law on International Private Law of the RM, Official Gazette of the Republic of Macedonia, no. 87/2007). Accordingly, the foreign court decision will not be enforced when the legal effects of its enforcement are contrary to the constitutional order or incompatible with the fundamental principles stipulated in the Constitution of the RM.

[2] Article 129 of the Constitution of the RM (1991) says: *The Constitution of the Republic of Macedonia is amended and supplemented by constitutional amendments*.

Constitutional Court with explicit competence to control the conventionality of statutes and other general legal acts. However, even though the Constitutional court[1] does not have the competence to control the conventionality/compliance of statutes and other general legal acts with the ratified international treaties (conventions, covenants etc.), this competence could be implicitly extracted from the Article 118 of the Constitution of the RM. Thus, in case of a collision between a statute and a ratified international treaty, the provisions of the international treaty have primacy over the domestic law according to the principle "*lex superior derogat legi inferiori*" (a law higher in the hierarchy repeals the lower one) and international treaties invalidate internal laws if they do not comply with the respective international treaties. Consequently, the Constitutional Court of the RM should offer legal protection to the international treaty by abrogating (*ex nunc*) or annulling (ex tunc)[2] the propositions of a specific statute when they infringe Article 118 of the Constitution (Saliu, 2004, pp. 198-200). Finally, another disadvantage of Article 118 is that it can be applied only to ratified international treaties.[3] In other

[1] The famous Austrian jurist Hans Kelsen affirmed the view that the main criterion for the evaluation of the democratization of a state and its possible qualification as a juridical state is the compliance of statutory acts with the constitution that is realized through a special court. It serves to the institutionalized control of constitutionality and it is considered as one of essential characteristics of the modern juridical state. Constitutional justice is an important mean to guarantee hierarchy of legal sources and the supremacy of constitution over all other legal acts (Kelsen, 1949, pp. 155-158. Moreover, the Constitutional court is an autonomous state institution that does not belong to the three branches of state power, and whose creation, organization, competence and functions are stipulated by Constitution, and as such, it safeguards the formal and material supremacy of constitution over all other general legal acts in the internal legal order and protects the constitution from general legal acts *contra constitutionem* that may degrade its superior authority and legal force.

[2] Because the goal of the control of constitutionality is to safeguard the compliance of all normative acts with the constitution, for the constitutional theory, the legal effects of the control of constitutionality of legal norms is a crucially important issue. As a consequence, from temporal perspective there could be two types of sanctions. The first sanction exists when a norm is declared unconstitutional, and the effects of its removal begin from the moment of announcement of the decision by the constitutional court, i.e. in the future (*ex nunc* - abrogation). Whereas the second sanction is that which has retroactive effect and eliminates legal effects that have been caused by the application of a unconstitutional norm, i.e. from the date of adoption and the entry into force of the unconstitutional norm (*ex tunc* – annulment).

[3] From the way the international treaties are incorporated in the domestic law, The Constitution of RM (1991) does not make any clear distinction of international treaties in two main categories: first, international treaties that ratified in the form of statute by the Assembly, and, second, international governmental treaties, that are not ratified by the Assembly, as they are regulated in Article 121 of the Constitution of the Republic of Albania (1998). Meanwhile, in the Macedonian legal doctrine and practice, "demarcation line" between these two categories of international treaties has not been drawn, and no criteria has been laid down to make the difference between the ratified international treaties and nonratified international treaties. In the Republic of Macedonia, the Assembly adopts a statute for the ratification of an international treaty when the state accepts international obligations

words, a 'rigid' interpretation of this article means, that it cannot be applied to international treaties that are not subject to ratification from the Assembly of the RM. The logical conclusion that could be deducted from this is that the Constitution of the RM does not give 'legal primacy *carte blanche'* to the international law in its entirety but only to international treaties that the Republic of Macedonia has expressly given consent by the acts of signature and ratification from the competent state authorities that are prescribed in the Constitution.

Fourth, "*International treaties are concluded in the name of the Republic of Macedonia by the President of the Republic of Macedonia. International treaties may also be concluded by the Government of the Republic of Macedonia, when it is so determined by law*" (Article 119). This constitutional provision confirms that the competent state authorities to conclude international treaties on behalf of the Republic of Macedonia are: 1) the President of the state, and 2) the Government, in situations that are expressly determined by law. The President of the RM is the primary subject for the conclusion of international treaties because he represents Macedonia internally and internationally and his treaty-making power is confirmed by the generally accepted norms of international law. Meanwhile, the Government of the RM is a complementary subject for the conclusion of international treaties, because it can conclude them only in the areas determined by law. In fact, the Government of the RM can conclude international treaties in the areas of economy, finance, science, culture, education and sport, transport and communications, urbanism, construction and protection of environment, agriculture, forestry, hydro economy, healthcare, energetics, justice, labor and social policy, human rights, diplomatic and consular relations, defense and state security, except issues related to the borders of the RM, association in or dissociation from a union or community with other states, and other international treaties which according to international

that require the amendment of existing laws or the adoption of new laws. The act of ratification has a decisive importance on this type of treaties because it is condition for their enforceability in the national legal order imposing the need for amendments or supplements in the domestic legislation. This is called treaty in broader meaning (*lato sensu*). On the other hand, international treaties which enter into force after the moment of their signing, without being subject to ratification from the Assembly can be considered as self-executing international treaties. In this category of international treaties a crucial importance has the act of signing, because after that they become effectively operative in the domestic legal order. It is to be noted that this type international treaties can be signed by the President and the Prime Minister of the RM in the fields coming within their area of competence. Moreover, self-executing treaties do not require adoption of new statutes by the Assembly or amendments and supplements of the existing legislation. As treaties in simplified form, these are "treaties" in the narrow meaning (*stricto sensu*). Nevertheless, self-executing international treaties do not have equal constitutional status with the ratified international treaties, and consequently they have weaker legal force (Paust, 1988, pp. 760-783).

law, are concluded by head of states, the Assembly of the RM ratifies international treaties in the form of statute (Article 68, paragraph 1, clause 6 of the Constitution of the RM). After their publication[1] in the Official Gazette of the RM and their entry into force, they are transformed into "*leges speciales*" (special laws) and at the same time they constitute an integral part of the constitutional order of the RM. Typically, if there are two legal acts that regulate the same matter, one of which is special and particular and the other general, two fundamental rules are observed: "*lex specialis derogat legi generali*" (a law governing a specific subject matter overrides a law which only governs general matters),"*lex posterior generalis non derogat legi priori speciali*" (a later general law does not repeal a prior special law) (Cassese, 2002, pp. 170). To sum up, the transposition and implementation of international treaties in the constitutional order of the RM is realized through statutes[2]. The Government and the President of the RM are responsible for the enforcement of international treaties. The original copies of international treaties are registered and deposited in the Ministry of Foreign Affairs of the Republic of Macedonia.

By becoming party to international treaties through the process of signing and ratification, the Republic of Macedonia assumes obligations that it is bound to perform. The Vienna Convention on the Law of Treaties (1969) stipulates two main criteria for the enforcement of international treaties: 1) the legal principle *pacta sunt servanda* (Article 26), according to which "*every treaty in force is binding upon the parties to it and must be performed by them in good faith*", and, 2) the legal principle that "*a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty*" (Aust, 2000, pp. 144-146). The successful application of the principle "*pacta sunt servanda*" has promoted the cooperation between states and it has been historically considered a necessary

[1] There is no doubt that the goal of publication of laws in the "Official Gazette" is to provide information about their content to citizens and to arouse their legal conscience. The popularization of the laws of a state among its general audience (*urbi et orbi*), contributes to their legal education and voluntary application in practice. The period between the promulgation of a law and the time its entry into force is called "*vacatio legis"* (law-in-waiting). The publication of laws and *vacatio legis* is based on the generally recognized principle of law: "*Ignorantia iuris nocet"* (Not knowing the law is harmful) and "*Lex non obligat nisi promulgata*" (A law is not obligatory unless it be promulgated).

[2] Radomir Lukic says that international treaties, from the perspective of internal law are legal acts, which are transformed in the form of internal statutory acts after their ratification by legislative state bodies. However, seen from the prism of international law, international treaties are specific international normative acts. In this case, real sources of law are only national statutory acts, because a state accepts and incorporates the substance of an international treaty when it ratifies it through a national statutory act. The adoption of such law, i.e. international treaty, which ultimately takes the form of a statute, is called ratification (Llukic, 1975, pp. 248–249).

condition for the existence and function of the international law (Shaw, 2008, pp. 829).

3. The Position of the European Convention on Human Rights

According what has been said above, it can be concluded that the European Convention on Human Rights has an intermediary legal position between the Constitution and statutes, i.e. from a formal perspective it is above statutes but below the Constitution. On the other hand, from a material perspective, it has an equivalent legal status with the Constitution. This is because the fundamental human rights stipulated by the Constitution of the RM (quantitatively, they include 1/3 of the text of the Constitution) are inspired and received from the provisions of the European Convention on Human Rights, i.e. they are identical with the respective articles of the Convention and, with few exceptions, they represent textual reproduction of the chapters of the Convention.[1] Indeed, there is a considerable degree of similarity, homogeneity and convergence between the catalogue of fundamental rights and freedoms of man and citizen in the Constitution of the RM and in the European Convention on Human Rights. This situation facilitates the work of judges when they rule on issues related to individual rights and freedoms because they can simultaneously invoke the symmetrically formulated articles from the Constitution and the Convention. Due to this, it appears perfectly obvious that the European Convention on Human Rights has exerted a profound impact on the substantial nature of the catalogue of fundamental rights and freedoms of man and citizen in the Constitution of the RM.

Seen *in concreto*, Macedonia's journey to the European Convention on Human Rights has been followed by some "colossal steps".

The first step of the Republic of Macedonia as a member state of the Council of Europe *vis-à-vis* European Convention on Human Rights was its political will to accept the Convention through the act of signing on 11 November 1995 in Strasbourg by the Minister of Foreign Affairs of the RM. However, the act of signing did not immediately have operative legal force, but it confirmed the good will of the Republic of Macedonia to be part of the Council of Europe, and to verify its obligation to harmonize the national legislation with the standards and

[1] As a consequence, every violation and restriction of the rights and freedoms of man and citizen, which is contrary to the European Convention on Human Rights, at the same time is contrary to the Constitution of the RM and vice versa.

postulates of the Convention in a reasonable period of time. In this context, in October 1997 the Macedonian Government's working group of experts prepared 'The Report on the Compliance of the Legislation of the Republic of Macedonia with the Standards and Requirements of the European Convention for the Protection of Human Rights and Fundamental Freedoms'. In the course of their work which lasted eight months, by applying the analytical approach and the comparative method from the perspective of the Convention and the case law of the European Court of Human Rights, the working group highlighted the necessary amendments to the Macedonian legislation. This study confirms the enormous implications of the Convention for the constitutional order of the RM in general and for the mechanisms for the protection of human rights and freedoms in particular (Greer, 2006, pp. 28-30).

The second step was the adoption of the Law on the Ratification of the European Convention for Fundamental Rights and Freedoms (Official Gazette of the RM no. 11/97) by the Assembly of the RM and its entry into force in 19 March 1997. From that date the Convention became an organic component of the domestic legal order of the RM with the possibility of its direct application by the courts as an internal formal source of law. Even though the Constitution of the RM in Article 98, paragraph 2 clearly stipulates that: "*courts judge on the basis of the Constitution and laws and international agreements ratified in accordance with the Constitution*", the Macedonian courts have not decided any case directly invoking a provision of the European Convention on Human Rights. As a matter of fact, Macedonian judges have not broken the myth of issuing their decisions only on the basis of statutes, without invoking the provisions of international conventions as well. There is no doubt that in the practice of the Macedonian courts there is still considerable hesitation to refer their internal operations to international legal acts. As a consequence, unless the provisions of international treaties are invoked in the practice of the courts, they will remain only theoretical fictions without any meaning and value in the real life. This means that the status that international human rights law enjoys in a specific country does not depend only on the content of its constitutional norms but also on the commitment of the judiciary to implement them in practice. This is best verified from Latin legal maxim: *Applicatio est vitae regulae iuris (The application is the life of a rule)*. Moreover, the famous French philosopher Montesquieu affirms the applicative aspect of law in his impressive and meaningful saying: *Quand je vais dans un pays, je n'examine pas s'il y a des bonnes lois, mais si on execute celles qui y sont, car il y a des*

bonnes lois partout (*When I go to a country, I do not examine whether there a good laws, but whether they are enforced there, because there are good laws everywhere.*)

The third step that the Republic of Macedonia took was the deposition of the instruments of the ratification to the Secretary General of the Council of Europe on 10 April 1997. It is important to keep in mind the fact that the Council of Europe as the date of ratification of the Convention considers the time of the deposition of the instruments of ratification to the Secretary General of the Council of Europe (Article 66, paragraph 3 of the Convention) and not the date when the national legal act for the ratification entered into force.[1] These events created the formal preconditions which enabled the Convention to produce binding legal effects in the constitutional order of the RM, among which the most essential are: 1) the duty of the courts to directly interpret and apply the propositions of the Convention in practice, and 2) the right of the citizens to directly invoke the propositions of the Convention in the proceedings before state institutions and individually lodge an application before the European Court of Human Rights when they consider that the final and enforceable decisions of state institutions have allegedly violated a right or freedom guaranteed by the Convention or its additional protocols (Greer, 2006, pp. 144-148).[2] In this respect, the Republic of Macedonia has made a

[1] The Law on the Ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms entered into force on 19 March 1997 (Official Gazette of the Republic of Macedonia, no. 11/1997). Similarly to other states, in the Republic of Macedonia, international treaties are not published in the same Official Gazette with other laws, but they are published in a special official gazette that exclusively serves for publishing international treaties. For example, in the Republic of Albania international treaties are published on a special official gazette that is called "Official Bulletin of the Republic of Albania", in the Republic of Macedonia "Official Gazette of the Republic of Macedonia"- International Treaties; in the Republic of Croatia "Official Gazette of the Republic of Croatia"- International Treaties, in the USA "Official Bulletin of the USA- International Treaties".

[2] According to article 35 of the Convention, a citizen of a member state of the Council of Europe has the right of direct protection of the rights and freedoms prescribed by the Convention and its additional protocols, before the European Court of Human Rights, when two conditions are fulfilled cumulatively: 1) there is an exhaustion of all remedies available in the national legal order, and 2) the individual appeal has to be made within a period of six months from the date on which the final decision was taken by a court of member state of Council of Europe. In other words, if a citizen exhausts all domestic remedies before national courts, then he can exercise the right of individual appeal to European Court on Human Rights (article 34) as "*ultima ratio*" legal remedy in the cases when they are not satisfied from the efficacy or equity of national court proceedings. For justice as a fundamental legal value, the right of citizen to sue his state before an institution of international judicature confirms the century old experience that the truth comes to light, even though it is always oppressed (*Veritas laborat nimis, extinguitur numquam*). In addition, article 34 of the Convention not only stipulates the duty of the states to allow their citizens to lodge individual applications to the

Declaration in accordance with Article 46 of the Convention which confirms the acceptance of the "compulsory jurisdiction" of the European Court of Human Rights, when it deals with the issues related to legal protection of human rights and freedoms included in the Convention and its additional protocols, especially when it hears and decides on individual applications lodged by citizens of the Republic of Macedonia.

4. Conclusion

In the hierarchical structure of the constitutional order of the Republic of Macedonia, international treaties take a specific position; they are above statutory acts, but below constitutional acts. In case of a collision between a statute and a ratified international treaty, the provisions of the international treaty have primacy over the domestic law and international treaties invalidate internal laws if they do not comply with the respective international treaties. The Constitution of the RM does not give "legal primacy *carte blanche*" to the international law in its entirety but only to international treaties that the Republic of Macedonia has expressly given consent by the acts of signature and ratification from the competent state authorities that are prescribed in the Constitution.

A disadvantage of the Macedonian Constitution is that it invokes only ratified international treaties, but not international treaties that are not subject to ratification from the Assembly or international custom. Another disadvantage of the Constitution of RM is that it does not expressly provide any competence to the Constitutional Court of the RM to review the constitutionality of laws that ratify international treaties. This could be improved with a constitutional amendment that could add to court's jurisdiction an innovative competence, that of *ex ante* control of the preliminary compliance of international treaties with the text of the constitution.

European Convention on Human Rights has an intermediary legal position between the Constitution and statutes, i.e. from a formal perspective it is above statutes but below the Constitution. On the other hand, from a material perspective, it has an equivalent legal status with the Constitution, because the fundamental human rights

European Court of Human Rights, but it obligates them not to "*hinder in any way the effective exercise of this right*". From the constitutional perspective, the Constitution of Montenegro (2007), in article 56 expressly stipulates that "*everyone shall have the right of recourse to international organizations for the protection of own rights and freedoms guaranteed by the Constitution*".

stipulated by the Constitution of the RM are received from the provisions of the European Convention on Human Rights, i.e. they are identical with the respective articles of the Convention.

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