

## Verifying International Law In Greek Courts

The Greek Constitution of 1975 contains certain clauses which introduce new principles relating to the hoary problem of the validity of international law within the domestic legal system. These new principles of the Greek Constitution form the three paragraphs of a special article, No. 28, which belongs to that part of the constitution treating the organization and the functions of the State. Article 28 is of great importance both for Greek Law, and for the general theory concerning the relation between International and Domestic Law.

In the past, a given custom was accepted by Greek courts according to which custom the principle "International Law is a part of the Law of the Land" had been adopted by the Greek legal system. Under that principle of Customary Law, international law was considered similar to domestic law, and of the same value. Consequently, International Customary Law complemented national Greek laws, but it could not prevail over them.

Because of the superiority of the Constitution, which is respected by the legislature under the control of the courts, neither domestic nor international law can contradict the rules of the Constitution. Judges in Greece always have the right to examine whether a specific law is in conflict with the Constitution; and in such a case they will not give effect to the unconstitutional rule. Such is the case with customary international law.

Previously, treaties and other international agreements became valid in the same manner, once they were transformed into domestic law by the legislature. Consequently all these international rules, customary and conventional, prevailed over existing laws which might be opposed to them. But a later law was stronger and could nullify or modify the international rule, custom or treaty. American lawyers would find that concept familiar.

Article 28 of the new Constitution provides an express solution to the dilemma. This article in its first paragraph states that: The generally acknowledged rules of international law—"that is to say customs and general principles of law"—as well as international conventions as of the time they are sanctioned by law and become operative according to the conditions therein, shall be an integral part of

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domestic Greek Law and—"this is an important innovation"—shall prevail over any contrary provision of the law."

Thus, international law is not only incorporated into the Greek legal system, but becomes *superior* to the Greek laws. The principle "lex posterior derogat priori" is not applied against International Law, which prevails even over later laws of the country. This solution corresponds to the monist theory and gives priority to international law as against domestic law. But this priority is not extended to the constitution itself, because only the laws of the country and not the constitutional provisions give way to international law. In consequence, the embarrassing spectacle of a domestic statute in conflict with a treaty, but valid internally, is avoided.

The second paragraph of article 28 of the new Greek constitution concerns the recognition of powers provided by the Constitution, such as legislative ones, for the benefit of international organizations and their agencies. In fact, contemporary organizations possess the ability according to their status to affect the domestic legal order of the member-states. The European Community is an especial example of this capability. To facilitate the participation of Greece in these international organizations, the Greek Constitution, in Article 28, Par. 2, stipulates that: "Authority provided by the 30 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."

In order to confer such powers upon international organizations, two conditions must be fulfilled according to the above paragraph. *First*, the purpose of such an agreement should be both to serve an important national interest and to promote cooperation with other States. This purpose will be the object of investigation by the Parliament itself. *Second*, to sanction this agreement so that it should become a law, an expanded majority of three-fifths of the total members of Parliament is required, evidently because of the importance of the decision binding the Greek authorities.

*Another* innovation of the Greek Constitution is embodied in paragraph 3 of article 28. This provision concerns limitations of the national sovereignty, which appear to be necessary these last years, because of the existing cooperation between States, as well as the promotion of political action and the vital interests of each of the States concerned, through mutual collaboration. The limitation of sovereign rights in this case is not followed by a transfer of authority to foreign agencies. This paragraph reads as follows: "Greece will freely proceed by law, passed by the absolute majority of the total number of members of Parliament, to limit the exercise of national sovereignty, insofar as this is dictated by important national interests, does not infringe upon the rights of the individual and the

foundations of democratic government, and is effected on the basis of the principles of equality and under the condition of reciprocity.”

*A formal* condition for the application of the above paragraph is the vote of a law by a majority of the total number of the members of Parliament. The four additional substantive conditions required, *e.g.*, a) The existence of an important national interest; b) not to infringe upon the rights of the individual; c) not to infringe upon the foundations of democratic government; and d) to be effected on the basis of equality and under the condition of reciprocity, must be verified by Parliament under the political responsibility of its members. Such a limitation of the national sovereignty may be necessary in the case of concession in order to establish free-custom zones or foreign military installations and bases.

Such is the manner in which the problems of the relation between international and internal law and, even more, of the conflict of state sovereignty with obligations imposed by treaties and international politics, are treated in the Greek Constitution. The solutions given are in conformity with modern conceptions and the requirements of the international community.

