THE RELATIONSHIP BETWEEN
INTERNATIONAL LAW AND INTERNAL
LAW IN THE CASE-LAW OF THE SLOVENE
CONSTITUTIONAL COURT

Mirjam Škrk*

I. Introduction

At the outset it must be emphasised that all courts\(^1\) in Slovenia and a number of state organs are bound to apply international law according to Slovene national law.\(^2\) However, the Constitutional Court of the Republic of Slovenia is the highest body of judicial power for the protection of constitutionality, legality, human rights and basic freedoms.\(^3\) In this position, it plays the most prominent role regarding the relation between international law and the Slovene domestic legal order. Apart from other competencies assigned to it, the Constitutional Court provides for the formal interpretation of the Constitution and has the jurisdiction to review treaties.

The application of international law within the Slovene national law is regulated by the Constitution and may be examined by international and/or constitutional lawyers. In the discussion below, the relationship between international law and internal law will be analysed from the point of view of international law, taking into account the relevant case-law of the Slovene Constitutional Court.

\(^*\) Professor and Former Judge of the Constitutional Court of the Republic of Slovenia.

\(^1\) In the second sentence of Article 125 of the Constitution (Independence of Judges), it is determined that judges are bound by the Constitution and laws. The Courts Act (ZS-UPB\(_3\), Official Gazette of the Republic of Slovenia [hereinafter: Off. Gaz. RS], No. 27/07) prescribes in Article 1 (III) that in the performance of judicial office a judge is bound by the Constitution and the law; in conformity with the Constitution, a judge is also bound by the general principles of international law and by ratified and published treaties.

\(^2\) The terms internal law, domestic law, national law, and municipal law are synonyms and may be used interchangeably. A. Aust, Modern Treaty Law and Practice, Cambridge University Press, Reprint 2002, p. 143.

\(^3\) Article 1 (I) of the Constitutional Court Act, Off. Gaz. RS, Nos. 15/94 and 64/07.
II. Theories on the Relationship between International and National Law

1. Monism and Dualism

Speaking of the relationship between international law and national law, one cannot escape the leading legal theories relating to this interaction, namely the theories of monism and dualism.

The advocates of monism[^4] claim that international law and internal law constitute a uniform legal system that contains principles on resolving the conflicts between them.[^5] In regard to monism, in the past the question was often raised whether the supremacy of internal law prevailed over international law or whether the latter prevailed over national law. Today, the theory on the primacy of internal law over international law seems more or less obsolete.[^6] Indeed, it seems that the theory of the supremacy of international law over internal law has gained more support, especially in the field of the international protection of human rights. Diplomatic practice, international jurisprudence, and the increasing case-law of national courts acknowledge that despite the fact that states often violate international law, the latter cannot exist unless its supremacy over national law is affirmed.[^7]

Dualists[^8] take the position that international law and internal law form two distinct, independent and separate legal systems. It seems that the dualist approach has more supporters in the theory of international law than the monist approach. Namely, the supporters of dualism claim that it better serves the practice of states and the factual use of international law.[^9] However, the theory of dualism permits a common field of operation in which international law can be considered applicable.

[^4]: The best known contemporary monists most often mentioned are the Austrians H. Kelsen and A. Verdross, the British author H. Lauterpacht, and the Frenchman G. Scelle.
[^6]: Monism, with the supremacy of internal law, was put forward by the German J.J. Moser in the 18th century and was later elaborated on the basis of Hegel's philosophical views. A. Cassese, *International Law*, Oxford University Press, 2001, p. 162.
[^8]: The German H. Tripel and the Italian D. Anzilotti are most often mentioned as dualists. The Croat J. Andrassy may also be listed among moderate dualists.