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Efficiency Modalities in Internal Plan of Decisions Issued by International Jurisdictions that Regulated the Situation of Private Law Persons in National Judicial Order

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Abstract: The objectives of the article are represented by the prove of the fact that the decisions of the court give birth to rights and obligations in natural persons and judicial persons' patrimonies, in internal law, so that the problem if these can prevail from the authority of the thing judged is posed? Besides this situation, the rules of international law are applied by national courts according to national constitutions and for domestic purposes. According to the theory of the act of state, even if it would seem that, at least internal acts of implementation of international rules are subjected to internal jurisdictions, the resolutions implemented often touch the problem of security and public order which escapes the judicial competency. In order to realize this study the systemic method, the comparative method and the logical method were used, but a tight collaboration, a combination of research methods are imposed, so that each has the vocation to seize the universe, thus it is proper to mention the contribution of epistemology as a reflection on sciences, bringing into discussion a normative discourse in systems of descriptive texts. In conclusion, the national judge is free to ignore the decisions of ICJ or to keep in mind these decisions in interpreting an internal law norm, an international law rule or to avoid the reexamining of problems already presented in these decisions. It is important to also realized an approach of the image of the law and of its meanings, beyond the clichés we got used to, observing that, due to its complexity, law can not be reduced to one and unique representation.

Keywords: jurisdictions; resolutions; international organizations

1. Introduction

Modalities of efficiency on an internal plan of decisions issued by international jurisdictions that regulated the situation of private law persons in national judicial order suppose, on one side, the intervention of an internal judge. This may be demanded either by the creditor state either by private persons that benefit from rights and the in task of which the decision of the international organism give birth to obligations. The compulsory effect of ICJ decisions is based on a rule of conventional law that binds only contracting states.

2. Monitoring the implementation of decisions issued by international jurisdictions

According to art. 94.1 from the Nations Charta, each member state engages in obeying the decision of the International Court of Justice (ICJ) in all the case in which it is a party. Regardless all this, the Charta doesn't provides any mechanism of monitoring the implementing of these decisions instead of informing the Security Council regarding the non-execution, a mainly political organism, which will

act, in consequence, on criteria that are more political than judicial, even if the execution represents the third phase of an essential judicial process. This is why, the creditor state has the following means at its disposal for the obtaining of the execution of an ICJ decision:

- the adoption of countermeasures;
- the use of services of an international or regional organization;
- the informing of the Security Council.

In particular, this enforcement may be guaranteed by an internal judge. To sustain the ideas mentioned, art. 94.1 must be corroborated to art. 59 from the ICJ Statute which provides that decisions are not compulsory but for the state involved in the litigation. Because private persons are not parties in the trial presented in front of international courts, these are not bind by this decision and neither the internal judge which runs a future procedure in which these private subjects are involved.

The national judge put in front of such a dilemma, may use the decision of the international court in the interpreting of an internal disposition, in the interpreting of international rules and in solving prejudicial problems.

As consequence, the decisions of international courts are not susceptible of enforcement on a national plan due to their inter-state nature and to the principle of relativity of the effects of judicial decisions (Pigui, 2008).

In the specialty literature it is considered that at the moment in which the state acts in front of an international court to realize the rights of internal subjects of private law, a procedural substitution is produced, which allows the latter to benefit from the effects of the international decision in a quality comparable to that of their state, which they will be able to value in internal procedures, as in the first case. Such a conclusion may be confirmed by the institution of diplomatic protection. This reasoning is contradicted by the case regarding the *Mavrommatis Concessions in Palestine* (Jennings, Lowe, & Fitzmaurice, 1996, p. 328), in which the Permanent International Court of Justice showed that the decision from 30 August 1924 that the state which acts for the diplomatic protection of its nationals “it does not replace its nationals, but it values its own law”.

This problem was also put in the *Avena*¹ case where ICJ recognized that the right to diplomatic protection is a temporary right of the individual and that the native state may act in front of the Court in order to value this right. Regardless all this, the Court hasn't confirmed that the state mentioned has the right to an appeal by replacing in the private person's rights, but it has underlined the possibility of the state to defend in front of international courts individual rights of its nationals².

Accessing this interpretative reasoning we can ask ourselves if it is also valid for the European Court of Human Rights (ECHR). The problem isn't for the cases in which the state takes precaution measures and adopts internal norms that allow the review of a trial after a decision was issued by the European Court of Human Rights. In this case, the internal judge's is to open the case that results directly from the ECHR decision, but from an internal law disposition (Murphy, 2000, p. 181).

¹ International Court of Justice, *Case Concerning Avena And Other Mexican Nationals (Mexico V. United States of America)*, United Nations Publications, 2005, p. 4-14.

² Thus, because Osbaldo Torres (*Avena Case*) was not a part of the case presented in front of the International Court of Justice, he couldn't invoke the authority regarding the problem judged in this decision in front of American legal courts. The Oklahoma Appeal Penal Court has answered to its appeal that „The International Court of Justice has jurisdiction only over this Court”.

In the case *Committee of nationals residing in the United States in Nicaragua v. Reagan*, the American courts rejected the demand of indemnifying a civic committee introduced as a result of prejudices provoked by the Nicaragua war. In the recurrent' opinion the US responsibility results from the support offered to the CONTRAS movements and which was established by the International Court of Justice as being illegal. The first American court rejected the claimants request on the grounds that it involves a "political question".

The Appeal Court rejected the appeal motivated by the fact that individual persons can not act in front of an internal court in order to obtain the execution of ICJ (O'Connel, 1990, p. 15). In the *Socobel* (Jasentuliyana, 1995, p. 287) case, The Permanent Court of Justice (PCJ) has issued a decision that confirmed the validity and the compulsory character of the arbitrary sentence from 1936, obtained by *Socobel* (Belgium Commercial Society) as in 1939, but to which the Belgian state did not offer efficiency for the guarantee of the execution of a flat sum deposited in Belgium banks and belonging to Greece in the virtue of the Marshall Plan. The court denied the execution efficiency of decisions showing that arbitrary sentences, nor the decision of the Permanent International Court of Justice were not the object of a procedure of executor in Belgium, and *Socobel* wasn't a part of the litigation presented in front of ICJ.

A part of the doctrines criticize the solution offered by the Belgian courts. Claude Albert Collard considers that the decisions of the Permanent International Court of Justice and, in consequence, of the International Court of Justice should be assimilated to those of a superior court instead of those of a foreign court and thus, should be exempted by the exequatur formality. Or, it has been considered that, allowing a national judge to put in application the power of the thing judged when an international decision was issued, would mean the breaking of the principle "the impossibility of infirming an international judgment through national judgment", principle that was affirmed by PICJ on the 13th September 1928 in *the Problem regarding the Chorzow factory* (Amerasinghe, 2002, pg. 439-442).

The cases presented have given examples of interpretative theories that represent true obstacles in offering efficiency to the decisions of international courts in front of national courts. The models given as examples, through which national court have offered efficiency in national legal order; the international decisions have been sustained by a series of theories, contrary to the ones presented. A first difference was made regarding the decisions issued by international courts regarding the lining of frontiers which were called decisions *in rem* opposed to *erga omnes*, unlike the decisions that establish obligations in the task of debtor party and which were subjected to the effect of relativity (decisions *in personam*). This doctrine was criticized on reason that the effect *erga omnes* of the so called decisions *in rem* would allow the invoking of international decisions by privates, even if these are not a part of the parties or recipients of these decisions. The decision issued by ICJ in the case *Norwegian Fisheries* was taken into consideration by the Norwegian Supreme Court in the cases *Rex c. Cooper* and *Rex c. Martin* (Lauterpacht & Greenwood, 1957, pg. 166-167). The Norwegian government was delimited through decree on the 12th of July 1935 fishing areas reserved with exclusive title to its nationals. Great Britain started an action in front of the International Court of Justice regarding the noncompliance with the international law that established frontiers. ICJ rejected this demand on the considerate that the method followed isn't contrary to international law (Pigui, 2009). Later, in front of Norwegian courts were introduced two similar appeals: two privates, one English and one French were accused of having fished in Norwegian waters and sentenced to paying a fee and the partial confiscation of cargo and equipment. Both have made an appeal sustaining the impossibility of applying in internal law of an Norwegian ordinance of frontier delimitation because this decree is contrary to international law, on one side, invoking the principle of good faith. As

answer, the Norwegian Supreme Court has showed that the compliance of this decree with international law was established by ICJ in the Fisheries case in 1951. Identically, the decision issued in the case *Minquiers et des Ecrehous* the Cassation Court was involved in the *Buchanon* case (Lauterpacht & Greenwood, 1970, pg. 425-426). The French Society Hanappier-Peyrelongue has used for the labeling of the whisky it produced, labels that resembled to those used by the London society James Buchanan for its bottles of whisky, so that it a confusion could appear regarding the origin of the product. In consequence, the London society has started an action in France for the compensation a decision was issued in which, on one side, the imitation of labels by the French society was interdicted and, on the other side, the action of the French society was recognized as representing an act of disloyal competition. The London Society has deposed an appeal in cassation against this decision considering that it hasn't obtained a conviction to the compensation of the French society for the imitation of the label. The French society sustained that this conviction should have been applied in two months according to French law. The French society prevailed from the ICJ decision in the case *Minquiers et des Ecrehous* showing that the French and English theories have a common frontier and that in this case a longer term couldn't have been valued in favor of the private subjects that have their residence in a state next to France (possibility offered by French law). Through the ICJ decision it was stated that the territories of the Minquiers and Ecrehous islands, being situated at less than 6 marine miles from the French coast and subjected to British suzerainty, may be considered as being limits of the French territorial waters that extend on a distance of 3 miles from the coast. The French Cassation Court, in the case of the *Minquiers et des Ecrehous* decision, rejected the exception of the inadmissible appeal raised by the French society showing that the islands are situated outside British territorial waters and their contiguity with French territories could not have as result the institution of a common frontier between the two states. Thus, there is a possibility of examining a longer term than two months for the British society, the appeal being declared as admissible.

3. Conclusions

In the absence of similar internal norms, national courts have the possibility, either to interpret the case in a general manner and according to national law allowing at the same time the adoption of the ECHR point of view, either to consider that the decisions of the Court do not affect the power of the thing judged on an internal manner, the execution force of national decisions. In both cases, the ECHR decisions can not be invoked with the power of the thing in front of internal courts. The decisions of international courts force only the state party in the case but not the national legal courts, even if the state as an abstract entity is represented on the plan of international relations through its public organisms. Thus, it would result that the actions of state public organisms engage the responsibility of the state on an international plan and the obligations of the state does not bind its public organisms. As example we can mention the refuse of the internal judge to apply the decisions of the International Court of Justice we remember the refuse of American judicial authorities to efficiency the decision of the Court in the *Avena* case by invoking the lack of the thing authorities judged of this decision for American courts and the principles of power separations in a state.

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