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ON THE QUESTION OF INTERNATIONAL COOPERATION IN THE LEGAL SPHERE AND APPLICATION OF LAW BEYOND THE LIMITS OF NATIONAL TERRITORY

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Abstract: *The report explores some aspects of the operation of legal regulations in the space.It is considered in the theory that it is based on several principles: the „territorial" principle, the" principle of citizenship", the „real" and the „universal" principles. According to the so-called „universal principle", the state extended its law beyond the borders of its territory if it results from an international treaty. The presentation focuses on one of the typical examples of this principle - the fight against piracy on the high seas in which the participants in the UN Convention on the Law of the Sea adopted the duty to fight it, no matter what flag or what is the nationality of the pirates or the victims.*
Keywords: *state, territorial, universal, principle, international, cooperation.*

Introduction

As a summary category, the issue of international cooperation in the legal field brings problems with different aspects. In a narrow sense, it can be associated with several aspects: 1 / legal nature and legal consequences of the acts set out in the legal framework of cooperation among States; 2 / various aspects of this interaction; 3/special features of sectoral differentiation of legal problems in connection with the cooperation. It could be the point of view of international cooperation, seen only from the perspective of the sources of public international law and definitive understanding of the nature of international relations.

Exposition

Seen in a broader sense, however, this topic is the starting point for the study of an universal problem in respect of which there is some gap in legal theory. It is a specific manifestation of the law outside the nation-state and - especially for the various principles, on which it is based. On this plane can be analyzed the issues related to the interaction between national and international law, their mutual influence and advantages in the application of one or another law. Placed in this context, the effect of these essentially clear mechanisms can be treated not only as a legal or contractual fact, but also in the light of the expedience and utility in relation to the feasibility of the purposes, for which international cooperation is realized.

Such an analysis is connected with the question of where is the limit of the universalization of a legal order. In connection with that problem it is necessary to define and distinguish different forms of contact between the normative resources in international communication. This can be done by defining the following lines: firstly, the conflict of positions, secondly - the basics of harmonization between the various legislations, thirdly, the intersection of mutual interests in the coexistence of nations, determining the universality of certain legal norms. In this analysis it is appropriate to focus on situations in which cooperation between states lieds to exeptions from the application of national legislation.

In legal theory, even if the latter is not particularly rich in thematic developments in this field, they are distinguished four principles of application of law in space: „territorial" principle, „the principle of citizenship", „real" and „universal" principle. Complete analysis of the universal principle would be impossible without clarifying the nature of the territorial and the other principles. The territorial principle of operation of law in the area is considered as a pioneer since its applicability is guaranteed by the fundamental value of international law - respect for state sovereignty. Nowadays sovereignty is recognized for each state, besides its most specific expression - the legislative will of the nation-state, mainly valid in its territorial limits. Thus, usually the other known principles are applied on the basis of mutual subsequent exclusion in cases where the territorial principle of operation of the national law is not applicable.

According to the principle of territoriality, law operates throughout the country, i. e. within the state borders. Addressees of legal norms are familiar exactly with that law. This circumstance is a natural consequence of rational belief that the norms created by the legislature of a particular State, the expression of its sovereign will, apply within the territory in which this will can be manifested. During the analysis of this principle, however, the question arises to the applicability of certain legal institutions, as recognized in international law. Compliance with them formed a specific exclusion from the operation of the principle of territoriality and extended the scope of the national legislation outside the state territory. A good example is the institute "immunity" and the hypotheses concerning limitation of certain laws within a particular area (e.g. acts governing the system of free economic zone). According to some authors, however, the territorial principle of the law could be extended beyond the territorial limits of the state on objects, conditionally equivalent to its territory, for example the continental shelf and the exclusive economic zone, over spacecrafts, civil aircrafts and vessels at hight seas and airspace above it, warships and aircrafts, regardless of their location (the „principle of flag")[1].

These examples are specific because they demonstrate the extraterritorial effect of national law, based on international legal coherence and influenced by the established commitment to collaboration and its mechanisms. They lead to the question which principle is actually observed: the applicability of the principle of territoriality, or the so-called "universal principle", also known as the principle of international cooperation in the legal sphere.

According to the "universal principle" the state extended the application of its law beyond its territory if it is the result of international contract[2]. However, this action is related to the fact that the principles, placed on its basis, actually are incorporated or remain inapplicable for each normative statement in accordance with the discretion of the legislature. Each country, creating a specific legislative act by means of its legislative bodies and in accordance with its policy, determines alone what principles of action in space to set, reflecting these principles in the legal act [3].

Usually the „universal" principle of spatial effect is incorporated in the national legislation, if the specific country is bound to observance of principles and norms, approved by the international community and related with international treaties, signed by the state. However, this is not an absolute criterion for the application of the general principle. In contemporary international law, rallying point of common values enjoying the support of the so-called. "civilized" humanity, is the Organization of United Nations. Just these values are summarized in the United Nations Charter, adopted by all civilized nations and marked by the universality. They reflect a general and even community ideological foundation upon which are built the principles and norms of different branches of international law. Any cooperation, carried out under the patronage of this organization is a reflection of the will to comply with the approved guiding principles, called upon to protect common human values [4].

Development of international criminal law is a typical example in this respect. It is relatively new, independent share of law, obtained intensive development after World War II. Its general characteristics include features and elements, inherent to the law in principle, but this features are especially typical for criminal and international law. On the other hand, however, it has a kind of components that give it its own self-image and identity in the legal system. It can be assumed that the fact of its origin and development largely demonstrated the will of States to adopt universal ways at least in the matter, which in most degree is engaged with the protection of the legal order.

International criminal law is a body of law governing the cooperation between countries in their fight against the offenses indicated at international treaty. These limits are designed to ensure the protection of international public order, established with the help of international law.

That, what distinguishes international criminal law from international public law, are the different subjects of responsibility. In public international law, its subject is the state; in international criminal law it is the criminal responsible, physical person. The type of punishment and the manner of suffering are also different.

Notwithstanding the above, international criminal law is one source of universalization of the legal order. Its object of regulation is associated with cooperation between states regarding the prevention, investigation and prosecution of acts that are indicated as a crimes in international treaties. Characteristic of this part of the law is that in the course of its creation and development the Member states will coordinate their will in order to protect their sovereignty and their values. Standards set were always an expression of the mutual coinciding will of several countries. They reflect both the composition of the crimes and the forms of cooperation adopted by countries in the fight against international crimes, as well as procedural rules. Guiding principles of international criminal law include: inevitability of the penalty for each offense, which is a crime under international criminal law (the principle - "deliver or try"); persons shall not be exempt from international criminal responsibility because of the fact that the domestic law of the Member state contains no criminal sanctions for the act; the official position of the person did not discharge; responsibility lies not only with domestic but also to a special international court [5].

International criminal law fixes two major groups of offenses: the first one includes „the real" international crimes whose object is the main international relations, related to peace and security in the world, as well as those regarding the preservation of mankind. In the framework of this group are: crimes against peace (planning, preparation, initiation and conduct of aggressive war), war crimes (murder, torture of civilians or prisoners of war, attacks on civilian objects and places, historical and cultural monuments, etc.)., crimes against humanity (genocide, apartheid, racial discrimination). Persons who have committed crimes mentioned, in proven guilty, are liable to punishment

The second group includes crimes against the stability of international relations (terrorism, hostage taking, piracy, etc..); crimes against the economic, social and cultural development of countries (drug trafficking, smuggling, counterfeiting currency of course abroad, etc. .); crimes against human rights (slavery, torture, trafficking women and others.); crimes committed on the high seas (piracy, damaging undersea cables, etc.) [6].

The main source of international criminal law conventions are developed with the assistance of the UN, as well as those, that are created within the Council of Europe. Other sources are customs that are a major met down in the rules of the conventions (e.g. the principle "deliver or try") and judgments (e.g. the judgment of the Nuremberg Tribunal) [7].

Enumerated criminal acts are characterized by the high level of social danger that lieds to the necessity to combine the joint efforts of states to prosecute and punish them no matter where, by whom and to whom they were committed. Namely the „universal" principle laid down action in the space of a number of national laws regulating this matter, ensures a guarantees for judging the participants in such crimes. It gives possibility of realizing the judgement in the State where perpetrators was catched, justifying the applicability of its own criminal code, even if crimes were not committed on its territory. This approach is perceived with a view to international legal obligations of states and their shared position that these crimes must not be unpunished [8].

To trace profoundly the essence of the universal principle of operation of law in the area, we should consider international cooperation in specific legal fields, focusing on specific legal branch that is build on universal rules raised on contractual principle. Appropriate basis for such observations is the area of international maritime law, which is easy to prove the impact of universal principles and norms (including these, whose object of regulation belongs to other legal fields and units) over the application of the national legislation of each country. Concentration of similar examples are seen in association with the international legal regime of the high seas. The crime "piracy," is a concrete example which is treated in certain international acts from that area.

The first legal regulation, related with the treatment of piracy is enshrined in the Convention on the High Seas. It gives some definitions regarding the nature of these offenses. As „pirate" are indicated vessels and aircrafts, if persons who have authority over them are designed to make piracy. Under this Convention, the ship is considered pirate even if it is not originally destined to perform such activities, but it is in the power of individuals who are treated as "pirates." Some authors set pirates as people "who sail the seas on his own will in order to commit acts of violence and robbery with ships ..." [9].

In his art. 15 the Convention defines piracy action as any illegal act of violence, detention or extortion, directed against another ship or aircraft, or against persons or property located on their board and against any vessel or aircraft, persons or property in a place located outside the jurisdiction of any state. The convention is assumed that it is irrelevant whether the attacks are carried out at sea, they are outside the jurisdiction of any country, or they are made by the crew or passengers. Voluntary participation, instigation and intentional assistance in carrying out such acts are treated as such. Similarly are treated these acts, when committed by military or government vessel, whose crew had raised mutiny. According to the same Convention, each State has the right to prosecute and to capture pirate ships, to arrest persons on their board, and to take possession of the property found there. Conditionality is provided in terms of specification of ships entitled to seize pirates: these are warships and aircraft, and vessels in government service authorized for such actions.

These situations are largely reproduced in the UN Convention on Law of the Seas / UNCLOS / 1982, which authorizes states to form their own laws and rules, ensuring the fight against piracy.

Both conventions require states to co-operate with each other in connection with the prosecution of these offenses. The State which carried out the arrest shall be entitled by judicial authorities to determine the penalties to be imposed on the pirates as well as measures against pirate vessels. A number of countries incorporate into their national legislation specific provisions consistent with the recommendations of the UNCLOS and other international acts in that sense.

According to these international instruments, the actions carried out by warships to combat piracy, are legal in all cases.

Verification may be taken when there are reasonable doubts about the performance of such activities, irrespective whether the suspect vessel is sailing without flag or flying with the flag of a particular country. This approach is set to the position that piracy itself is a negation of all international treaties and national laws and therefore the fight against it should not have concerns about the violation of any national law. It is believed that the pirate and his ship are outside the protection of any flag and every military ship or boat situated in the service of government can keep them and take them for trial before the judicial authorities of their own country, if there is a good reason for that [10].

The question whether the Bulgarian citizen has to be delivered or not arises at the moment when in the country requiering the delivering, there is a criminal proceedings which have not been completed or it has already been sentence to a Bulgarian citizen. In Bulgaria, this issue is addressed by the Court (District Court and Appeal Court, which issues a final decision like a second instance). At the moment this question has no definite answer, and can not be dealt with uniformly in all cases. The difference in the position of Bulgarian citizens in connection with their transfer to a foreign country is due to the fact of the country's accession to the EU and the entry into force of the Treaty of Accession to the EU. Until now, there was a single 'extradition' production. After joining, they are two different proceedings in relation to the following hypotheses: 1/ when it is required to surrender Bulgarian citizen of a State which is not member of EU and 2/ when it is required to surrender Bulgarian citizen of a Member state. The legal framework for addressing these issues lies at the Law on Extradition and the European Arrest Warrant [11].

In the first case, the so-called "simple extradition" is arranged in Chapters I - IV incl. of the Act on Extradition and European Arrest Warrant. After joining it is left to act in cases in which enters a request for transfer outside the EU. In the same hypothesis substantive solution to the transmission or non-transmission of Bulgarian citizens is regulated clearly in their favor with legislative change since 2006. Its sense is that Bulgaria does not extradite (not transmit) its citizens of foreign countries who are not member States of EU.

Before the entry into force of the legislative change, this fundamental formulation was directed by way of interpretation, based on constitutional norms, the Act on Extradition and European Arrest Warrant and the European Convention on Extradition. However, before its explicit statutory recognition, the need for interpretation led to the controversial practice of the courts. The results from differences in interpretation was a number of cases in which Bulgarian citizens were betrayed.

Of a later stage, with a view to effective judicial cooperation with other countries - Parties and with the purpose this cooperation to be carried out in equal conditions, it was created an express prohibition on the extradition of Bulgarian citizens. This is done by an amendment to the Law on Ratification of the Convention by means of a declaration under Article 6, paragraph 1, point. "B," which states: "The Republic of Bulgaria declares that it will refuse to extradite its own citizens. Republic of Bulgaria declares that it will consider citizen within the meaning of the Convention any person who holds Bulgarian citizenship at the time of receipt of the request for extradition". This text lieds to the inevitable and undeniable conclusion that Bulgaria does not extradite its citizens.

The right to refuse extradition of its own citizens is provided in the European Convention on Extradition. Till the moment all countries - parties to the Convention, including Member - States benefited from and all have made explicit statements in the above sense [12].

Conclusions

The examples and reasonings with regard to the extra-territorial application of law leads to reflections on the balance between the sovereign power of the state and the imperatives of globalization, requiring consideration of the interests of the international community. Although seemingly they are mutually exclusive, that, what unites them is the common interest: the conservation of ethno-social substratum and preservation of human values.

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