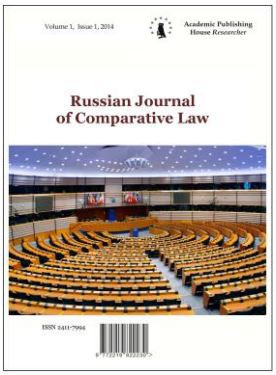

Published in the Slovak Republic
Russian Journal of Comparative Law
Has been issued since 2014.
ISSN 2411-7994
E-ISSN 2413-7618
2017, 4(1): 14-25

DOI: 10.13187/rjcl.2017.1.14
http://ejournal41.com

The Relationship between International, European and National Law in Spain

Pavel Biriukov [a] , [*]

[a] Voronezh State University, Russian Federation

Abstract

This article brings to light the problem of the relationship between international and national law of Spain. The author provides a number of norms which regulate the correlation of different norms in the legal system of Spain. The author analyzes the implementation of Spanish Constitution and the legislation, as well the procedure of the implementation of the rules of EU Law in detail is investigated. The obligations of the Spanish Kingdom in process of the implementation of the EU legislation are investigated in detail. The author examines the decisions of the Constitutional Court and characterizes its role in the process of the implementation of EU norms. The experience of the implementation of international norms in Spain will help to clarify the provision of the monistic concept the relationship between international and national law.

Keywords: the relationship between international and national law, the dualism, the monism, Spain, the implementation of international norms, the EU legislation.

1. Introduction

The problem of the relationship between international and national law occupies one of the central places in the doctrine and practice of any state. As it's known, there are two main theories - dualistic and monistic in this sphere. Monism is based on the assumption that international law and domestic law form parts of the same legal order. In countries with a monistic conception international law acts as a part of the national legal system that the courts should apply directly. No national measures of transformational nature are necessary. International law may have or may not have priority over national law in this legal order.

The monism has two varieties. According to one of them, 'monists claim that the laws of the state which are inconsistent with international norm, are not invalid in the internal legal order, insisting that in case of a conflict between international law and domestic law, the first must prevail' (Cazorla, 2013: 661). The second point of view is that the national law has primacy over international law. In this way, H. Kelsen (Kelsen, 1923; Kelsen, 1928) and A.Verdross (Verdross, 1937) considered that Austria's Constitution established the priority of national law over the international. However, as prof. G. Sperduti notes: 'a lot of lawyers who consider themselves to be monists, do it without on scientifical based theory of the correlation of international and national law, but they feel that monism, declared the priority of international law over national law, for this reason, can cause the regulation of international rules in the national system' (Sperduti, 1979: 459-460).

Dualism, on the contrary, is based on the assumption that international law and domestic law form two different systems of law. International law can become a part of national law only

[*] Corresponding author
E-mail addresses: birukovpn@yandex.ru (P. Biriukov)

by special incorporation of the national legislator. 'Dualism was created as a school of thought that sought to justify intuitive truth scientifically, to show that international law exists as a legal order independently. Thus, this law is distinct from domestic law' (Brótons, 2003: 178). According to prof. Casado Raigón R. 'dualists consider that a state that does not comply with international law in its domestic legal order to be under the international liability in which these two systems are not so different' (Raigón, 2012: 37).

What concepts of cooperation of international, European and national law do function in Spain?

2. Materials and methods

The main sources for writing this article became the official documents of the Spain, materials of the journal publications and archives. The study used the basic methods of cognition: the problem-chronological, historical and situational, systemic and the method of comparative law. Author's arguments are based on problem-chronological approach. The use of historical and situational method allows to reproduce assessment approach to the problem of the correlation of international law and national law in Spain. Method of comparative law defines the difference in views on actual rules of the activity of the subjects of Spanish law. A systematic method does achieve a variety of disciplines (constitutional law, administrative law etc) accessible and comparable, as present is determined by the past and the future - by the present and the past.

3. Discussion

1. The relationship between international and national law of Spain

Spanish researches are commonly divided into two groups: those, that were published before the adoption of the Constitution of 1978 (La Constitución española 1978) and thereafter.

For the first time, the republican Constitution of 1931 settled the place of international agreements in the Spanish legal system. In accordance with Art. 65 of the Constitution, all international agreements ratified by Spain and registered by the League of Nations, having the character of international law, would be considered an integral part of Spanish law, which must adapt to what they would be about.

In 1972 was adopted the Decree 801/1972, of March 24, on the organization of the activity of the State Administration in matters of international treaties (Decreto 801/1972, de 24 de marzo, sobre ordenación de la actividad de la Administración del Estado en materia de tratados internacionales).

The hierarchy of sources of Spanish law was enshrined in the Civil Code of Spain (Campos, 1977: 86-93). The reform of the Civil Code was carried out in 1974. Decree № 1836/1974 (Decreto 1836/1974, 31 Mayo. Texto articulado del Título Preliminar del Código Civil), approved the text, modifying the preliminary chapter of the Civil Code. Article 1.5 says: “The legal norms contained in international treaties are not directly applicable in Spain until they have become a part of domestic law by publication in the 'Official Gazette of the State” (Boletín Oficial del Estado) was included in the Spanish Civil Code.

After Franco's death in 1978 the new Spanish Constitution was adopted. The place of the international law in the legal order in Spain was established in Articles 93-96 of the Constitution (Martín, 1980: 143-184; Juste, 1978: 15-51). As emphasized by K. Salcedo: 'a preliminary draft of the Constitution contained a provision according to which agreements would have in the internal legal order 'hierarchy exceeding hierarchy of laws' (Salcedo, 1991). However, some experts objected to such posing the question. As a result, the Constitution didn’t strengthened directly the priority of international treaties over acts (Lloréns, 1984: 207).

Article 93 of the Constitution stipulates: 'Organic Act grants the right to enter into contracts, transmitting to international organizations or institutions the exercise of powers that do not contradict the Constitution, on the Cortes Generales or the Government; in each case the act places the responsibility to enforce treaties or resolutions emanating from the international or supranational organizations, authorized by this right. This constitutional provision establishes the legal framework for the incorporation of international law to the Spanish legal system. It allows the transfer of legislative, executive and judicial powers to the organizations of supranational nature (Martín, 1980: 143-184).

S.I. Sanz notes in this regard: 'in respect of treaties for which the Constitution requires the prior authorization of the Cortes Generales through an organic law (Art. 93), it is necessary

to publish the text of the above-mentioned law on accession to such treaty. Regarding the international treaties, which should be an object of authorization by the Cortes Generales, Article 94.1 of the Constitution recommends the same requirement in relation with reference to an Act of Parliament' (Sans, 2002: 181).

The basic rule of the correlation of international and national law is enshrined in Art. 96.1 of the Constitution: 'Existing international treaties, officially published in Spain, are an integral part of domestic legal order. Their provisions may be canceled, amended or suspended in the manner prescribed by the treaties themselves or in accordance with the general rules of international law'.

The question of the hierarchy of international agreements in Spanish law is not easy (Santaolalla, 1981: 29-56). Spanish law, mostly, united, although, according to M.T. Cazorla, in this question, 'the constitutional text would be clearer' (Cazorla, 2013: 664).

J.A. P. Ridruejo and P. Palomar emphasize: the texts of Articles 95.96 and 9.3, along with the legal practice allow to confirm that the hierarchical position of arrangements within the Spanish legal system is following. Agreements always take precedence over the laws, regardless of when they were adopted, but the Constitution will always prevail over agreements. Agreements are somewhere between the Constitution and the acts (Ridruejo y Palomar, 2007: 528).

This statement is supported by reference to the decisions of the highest judicial authorities in Spain. In this way, in the judgment of Supreme Court of Spain of 22 May 1989 specifically emphasized the impossibility of abolishing by the internal rate (even at the level of the Organic Act), the provisions of 'previous' contract.

The Court clearly stated: 'The agreement, that became a part of the Spanish legal order, is valid in our country and can't be abolished by the Labor Code in the subsequent edition, because the Constitution guarantees the principle of legality and the normative hierarchy (Article 9.3), and it should make the achieved agreement foreground'. The decision of the Supreme Court on February 12, 2009 states: 'A possible conflict that may arise between national law and international treaty, will exceptionally be a matter of the law applicable in a particular case, and will be resolved by the application of the principle of primacy of international treaties (Art. 96.1 of the Constitution)'.

At the same time on the issue of the relationship between the force of the Constitution and treaties Spanish Supreme Court don't always take an unequivocal position (Rodríguez, 1984). Thus, in the judgment of the Supreme Court on July 7, 2000 stated that the Treaty between Spain and the Holy See in 1979 dominates the Constitution. This approach gave rise to the doctrinal disputes, but in this case, the question had more a political rather than a legal nature, taking into account the role of the church in Spain.

The second time argument of the relationship between force of agreement and the Spanish Constitution arose in connection with the ratification of the Treaty establishing a Constitution for Europe (the European Constitution). Spanish Constitutional Court of the Spain (hereinafter – CCS) in the decision № 1/2004 of 13 December 2004 constants: the primacy of the Treaty, by which a Constitution for Europe is established, is argued, not as hierarchical supremacy of the treaty itself, but as an 'existential requirement of EU law, in order to achieve in practice the direct effect and the uniform application in all countries (Declaración del Pleno del Tribunal Constitucional 1/2004, de 13 de diciembre de 2004). So far as the EU Constitution had not entered into force, the question about the place of this agreement in the Spanish legal system, remained unresolved.

So after all, what concept of the relationship between international and European law is active in Spain? There is no consensus on this matter in the Spanish science. Prof. J.A.C. Salsedo sad: 'Nowadays the old doctrinal discussion faced with two opposed concepts: dualistic doctrine and monistic doctrine. For the first, international law and domestic law – two separate legal systems as to their sources, and due to the regulated matters (...). The monistic doctrine, on the contrary, supports the natural unity of the legal regulations and the principle that the validity and binding force of all the legal procedure are derived from the procedure of hierarchically higher' (Salcedo, 1991). A detailed analysis of the concepts requires a special investigation. At the same time, nowadays 'monism-dualism' concepts are not as relevant as they were before. In the doctrine a main attention focuses on the system of adoption of international treaties by Spain (automatic or special).

At the same time, M.I.T. Cazorla says that 'publicity is a prerequisite for the applicability of the agreement. The value that gives the publication allows us to define the doctrine by one way or

another (monism, continuing the historical Spanish tradition, or dualism, due to the fact that the adoption is not totally automatic). The hybrid nature of our system that gives it, of course, a certain feature which is not strange that the doctrine resorts to divergent definitions to refer to the same reality in which 'moderation' is a characteristic mark. Therefore, in Spain neither dualism nor monism in their latest versions (adapted) acts, but some combination that allows law enforcers to get acquainted with the rules of the treaty and its contents through the publication' (Cazorla, 2013: 662).

2. Implementation of primary EU law

Treaties of primary EU law are implemented by Organic acts (Ley Orgánica) in Spain (Biriukov, 2015: 121-127; Brótons, 2003 : 165; Carrión, 1982: 95-118).

Thus, the entry of Spain into the Community was issued by the Organic Act of August 2, 1985 (Ley Orgánica 10/1985, de 2 de agosto, de autorización para la adhesión de España a las Comunidades Europeas). In the Preamble of this Act it was mentioned about the conclusion of negotiations on European integration and the signing of the Accession Treaty. In p. 1 Art. 1 of this Act under Art. 93 of the Constitution there is a permission for the ratification of the Treaty of Accession of the Kingdom of Spain and the Portuguese Republic to the EEC and Euratom June 12, 1985.

In p. 2 Art. 1 of the Act there is a permission for Spain's accession to the Treaty about establishing the ECSC of 8 April 1951, in the terms set out in the EU Council decision of 11 June 1985. Article 2 establishes the procedure for the publication of the Act and its entry into force.

February 17, 1986 Spain signed the Single European Act, after that it was ratified by the Organic act of 26 November 1986 (Ley Orgánica 4/1986, de 26 de noviembre, por la que se autoriza la ratificación por España del Acta Unica Europea, firmada en Luxemburgo el 17 de febrero de 1986). In the preamble of the law it was emphasized: as the Single European Act changed some provisions of the treaties establishing the European Communities, that were ratified in accordance with the provisions of Art. 93 of the Constitution this treaty also required ratification. The text of the Act included two articles (about the ratification and about law's entry into force).

There was a serious discussion regarding the supremacy of EU law over the Constitution of the State in the Kingdom in the late '80s. A major role in resolving the contentious issues played the Constitutional Court of Spain (Iglesias, 1984: 216; Legido, 1991: 175-191; Lloréns, 1984: 207-220; Tremps, 1985: 157-181).

However, the question about whether constitutional review of EU law can carry out in this area is relevant. According to R. Iglesias and U. Woelker the Constitutional Court of Spain guarantees the protection of fundamental human rights in case of their violation by the national authorities in the application of European law (Iglesias, Woelker, 1987).

R. Iglesias noted that the Spanish Constitutional Court's position coincided with the practice in the Federal Republic of Germany and the Spanish doctrine (Iglesias, Woelker, 1987: 14). The decision of the Constitutional Court on 18 July 1989 emphasized: Community law can't be used as a parameter of the constitutionality of domestic law. According to the Constitutional Court, membership in the Communities does not mean that due to Art. 93 of the Constitution rules of Community law 'gained constitutional status and power'.

In the decision of April 24, 1990 the Constitutional Court recognized norms of Spanish law, contrary to EU law to be unconstitutional, but because of the other reasons - 'due to lack of competence'. Constitutional Court expressed its opinion about the lack of jurisdiction to resolve the question about the declared incompatible of the Organic act on the general electoral regime, which banned dual mandate, with the order of electing representatives to the European Parliament by direct secret ballot. Prof. C. Raigón expressed his doubts that whether this decision of the Constitutional Court was 'properly, in terms of the Community"? (Raigón, 2012).

He wrote that a formal repeal of the law, that is contrary to Community law, because of its unconstitutionality, not only does not harm to the principles of direct effect and supremacy of European law, but on the contrary confirms these principles.

Decision of the CCS 28/1991 of 14 February 1991 specified the provisions of Art. 93 of the Constitution (Pleno. Sentencia 28/1991, de 14 de febrero de 1991). According to the CCS, the Spanish authorities are not 'communitarian' authorities (even when they apply EU law). Constitutional Court of Spain with respect to European integration right used the adjective 'infra-constitutional'. This approach did not entirely consistent with the rule of EU law in the light of the decisions of the EC Court.

These CCS's decisions influenced all subsequent actions of Spain in relation to the Art. 93 of the Constitution has become a formal source of verification treaties of EC primary law (Biriukov, 2014: 163-172). The CCS described this Article as exceptionally procedural rule applicable to the accession to the treaties that require the transfer of sovereign powers to international organization with lawmaking functions, which application of rules becomes mandatory for the judiciary and the administrative authorities of Spain.

Another important area is the sphere of human rights. Pursuant to article 10 of the Spanish Constitution EU law contributes to the interpretation of human rights and freedoms enshrined in the Constitution.

Thus, the Constitution strengthened the mechanism of ensuring consistency with contracts, which constitute the primary EU law and its principles and norms. Control is provided by the COP in accordance with Art. 95.2 of the Constitution.

The resolution of conflicts between the primary right of European integration and the Spanish law is within the authority of the CCS. However, these control mechanisms relate exceptionally to primary law, as far as it possible due to Art. 96.1 of the Constitution. The difficulties for the CCS in considering issues related to the European integration of secondary law, arise from the fact that the Court is able neither to verify their compliance with the Spanish Constitution nor to invalidate them (Jimeno, 2006).

This doctrine of 'insignificance' in relation to the secondary law of the European integration was finally set out in the decision of the CCS in 1993. Constitutional Court of Spain pointed out that the application of the law of the European integration by the courts and by the administrative authorities does not affect the activities of the COP; its jurisdiction applies only to the protection of the Constitution (Lozano, 2006: 319).

Thus, according to the CCS, the task of ensuring the proper application of the law of European integration by public authorities lies with the EU Court and other EU institutions. The task of the Spanish courts is the right choice of the applicable rules in a particular case.

February 7, 1992, Spain signed the Treaty of Maastricht. However, it immediately became the subject of consideration by the Constitutional Court of Spain. The CCS specifically pointed to the need for ratification of the Treaty in its decision of 1 July 1992. At the same time the Court referred not only to the Art. 93, but also to art. 13.2 of the Constitution, which grants the right to participate in municipal elections to citizens of other countries in accordance with international treaty. As a result of the CCS's decision 27 August 1992 the Spanish Constitution was supplemented with a provision that takes into account the norms of the Maastricht Treaty (Pleno. Sentencia del Tribunal Constitucional № 1/1992).

Maastricht Treaty was incorporated into the legal system of the Spanish by Organic Act 10/1992 of 28 December 1992 (Ley Orgánica 10/1992, de 28 de diciembre, por la que se autoriza la ratificación por España del Tratado de la Unión Europea, firmado en Maastricht, el 7 de febrero de 1992). There was a reference to Art. 93 of the Constitution and to the previous ratification of treaties of primary law in the preamble. The text of the Act traditionally consisted of two articles.

As we can see, the accession to the treaties did not involve changes in the mechanism of implementation of the norms of the primary EU law. They were considered along with other international treaties. Checking their constitutionality, the CCS based on the general provisions relating to monitoring of international treaties.

However, since the adoption of the Treaty of Amsterdam in 1997 the procedure of implementation began to change in Spain. Spain signed the Treaty of Amsterdam 2 October 1998. Organic act 9/1998 (Ley Orgánica 9/1998, de 16 de diciembre, por la que se autoriza la ratificación por España del Tratado de Amsterdam por el que se modifican el Tratado de la Unión Europea, los Tratados constitutivos de las Comunidades Europeas y determinados actos conexos, firmado en Amsterdam el día 2 de octubre de 1997) was published December 16, 1998. The Act contained already the traditional reference to Art. 93 of the Constitution and an indication of the previous practice of the ratification of treaties. The text of the Act consisted of two articles. However, the Act contained the Statement of Spain (Declaración), concerning p. 2 and 3 art. K.7 of the EC Treaty. Spain recognized prejudicial decisions of the EU Court and the need of consideration of cases in the EU Court before the decision of a national court. Thus, the Act not only ratified the Treaty, but also provided the implementation of some provisions of European integration primary law.

In 2004 the Constitutional Court of Spain issued two important acts on the right of European integration: the Decision of 19 April and the Declaration of 13 December.

To begin with the decision № 58/2004 of 19 April 2004 (Sentencia № 58/2004 de Tribunal Constitucional, 19 de Abril de 2004). The Constitutional Court announced additional tax burden, set Art. 38.2.2 of the Act of Spain 1990 and the Catalan Act 1987 unconstitutional due to violation of the constitutional principle of legal certainty in its decision. In addition, the Constitutional Court said: 'When the Administrative Chamber of the High Court of Catalonia, ..., notes the contradiction between national and European law, it is, first of all, leads to doubts about the implementation of Community law, doubts that did not exist until this moment.

Thus, the court did not even expressed doubts about the incompatibility between domestic and European legal regulations, identifying the contradiction that no other judicial authority had watched before it (Martín y Pérez, 2005: 799). The Court had to turn with the prejudicial inquiry in accordance with the doctrine of the Court and Art. 234 of the EC Treaty, submitted the reasons why it considered that the national legislation was incompatible with Community law to the Court in Luxembourg. The Constitutional Court emphasized: 'In reaching a decision not to apply domestic legislation on the grounds that it is allegedly incompatible with Community law without prejudicial inquiry in accordance with Art. 234 of the EC Treaty, adopted by the tribunal, decisions that in accordance with national law are not subject to appeal, and on a subject in which the court applies the doctrine different from all the existing doctrines, being based on criteria established by the European Court in its several decisions, safeguards have been violated, which constituted the principle of a legal process'.

The Constitutional Court of Spain formulated four positions in the decision that were later used as appropriate by all public authorities of the Kingdom. The Constitutional Court:

1. provided protection against abuses, which directly cause was non-compliance with Art. 234 of the EC Treaty. 'It is true that the protection is not given on the grounds that Art. 234 of the EC Treaty is not fulfilled (it would be like granting European law 'constitutional status'). But we should not deny that the granting of protection on the basis that the breach leads to the violation of fundamental rights, is tantamount to the fact that European law (duty of submission prejudicial requests in accordance with Art. 234), may have constitutional significance';

2) deciphered duty directions of prejudicial question to the EU Court in respect of the content of the constitutional right to a fair trial (Art. 24.2 of the Constitution), which therefore also enables it to be protected by the complaints about the protection;

3) pointed out the control of the national courts' opinions on the question of duty of courts to deal with prejudicial inquiries;

4) gave the objective criteria for assessment, whether a judge was in a situation where he had a reasonable doubt about the necessity of a preliminary request to the EU Court.

In the decision of the Constitutional Court it's indicated that the traditional idea according to which the European law hasn't got a constitutional status, does not exclude it from the 'control of the judicial assessment of the possible conflicts between European law and domestic law, when it leads to a violation of fundamental rights outlined in the Constitution'.

The Constitutional Court extended this understanding to all the constitutional appeals. When considering applications for free pardon the Constitutional Court 'does not consider itself obliged to intervene in cases of violation of fundamental rights by an act of the state bodies, which are believed to be contrary to European law, or in cases of violation of fundamental rights as a result of the refusal of the Spanish courts by filing prejudicial request'.

The second - the Declaration of 13 December 2004 (Declaración del Pleno del Tribunal Constitucional 1/2004, de 13 de diciembre de 2004). Signing of the Treaty establishing a Constitution for Europe, contributed to the issuance of the Declaration by the Constitutional Court. European Constitution was approved by the Spanish people in a referendum. After that, the Government sent a request to the CCS, in which it asked to comment on the adequacy of Art. 93 of the Constitution to determine the order of integration of the Treaty in the national legal order.

CCS held that Art. 93 has got 'independent financial dimension that must not be ignored'. 'Article 93 of the Constitution, without a doubt, is the main constitutional basis for the integration of other legal systems in our own by distribution of exercising the powers arising from the Constitution. Other legal systems have to coexist with the national legal system, to the extent that they are separate legal systems.

Firstly, according to the Declaration of the Constitutional Court of 1992 (Pleno. Sentencia del Tribunal Constitucional № 1/1992), Art. 93 of the Constitution 'does not include the possibility of supervision equivalent to the constitutional reform process, which is regulated by Section X of the Constitution'.

Secondly, the position of the CCS is following: Art. 93 of the Constitution imposes certain boundaries on the process of the distribution of the powers of the European Union and on the integration of the rights of European integration in the Spanish legal system. 'It is inevitable for the sovereign powers of the state to make European law acceptable and compatible with the principles of social and democratic law-based state, established by the Constitution ... to respect the sovereignty of the state, our basic constitutional structures, system of fundamental values and principles enshrined in our Constitution, where the basic rights got its own independent nature (Art. 10.1 of the Constitution)'.

The Declaration of 2004 found that some of the provisions of the Spanish Constitution reinforce restrictions on the transfer of powers to the European Union; such restrictions constitute the content of article 93. The Constitutional Court has the authority to apply the relevant constitutional procedures 'to solve the problems associated with the possible contradiction of European law of the Spanish Constitution'. The CCS stated that it considered itself the final authority, that uses constitutional procedures 'to solve the problems associated with the possible contradiction of European law of the Constitution'.

Thus, mentioned decisions of the CCS have a great importance in the Spanish legal system. The Constitutional Court established that the conflict between the right of European integration and the Spanish legislation does not have the 'constitutional significance'. After that, most of the questions on the implementation of the primary law of the European integration has been removed.

The ratification of the Lisbon Treaty was made by art. 1 of the Organic act 1/2008 (Ley Orgánica 1/2008, de 30 de julio, por la que se autoriza la ratificación por España del Tratado de Lisboa, por el que se modifican el Tratado de la Unión Europea y el Tratado Constitutivo de la Comunidad Europea, firmado en la capital portuguesa el 13 de diciembre de 2007). There was made reference to Art. 10.2 of the Constitution and p. 8, Art. 1 of the Lisbon Treaty in Art. 2 of the Act. 'Rules relating to fundamental rights and freedoms in the Constitution should be interpreted in accordance with the provisions of the Charter of Fundamental Rights, published in the Official Journal of the European Union of 14 December 2007'. Hereafter was the full text of the Charter (all 54 articles). Thus, the law not only introduced the provisions of the treaty in the Spanish legal system, but also increased the legal status of the Charter of Fundamental Rights. Ratification of the rules of the Lisbon Treaty showed an improvement of the legal mechanism of implementation of norms of primary law of the European integration.

Finally we can draw the following conclusions.

The legal mechanism for the implementation of the primary law of the European integration, operating in Spain, suggests 'one-time' implementation of each new constituent of the EC Treaty.

The Constitution of the Spanish Kingdom takes precedence over the rules of law of European integration, including the EU primary law.

3. Implementation of secondary EU law

The provisions of primary law of the European integration are implemented in the rules of secondary law. Learn more about the implementation of acts of secondary law in the Spanish legal system.

For the purposes of implementing the instruments of secondary EU law on the recognition of EU vessels sentences Spain publishes the relevant laws. At the same time, reference to the article. 149.1.6.ª of the Constitution (on the subject matter jurisdiction of the central government) is made at each implementing legislation and it's stated that the law incorporates into Spanish Law corresponding EC document.

Thus, the Council Framework Decision of 13 June 2002 on the European arrest warrant Spain implemented by the Act 3/2003 on the European arrest warrant and extradition (Ley 3/2003, de 14 de marzo, sobre la orden europea de detención y entrega) and the Organic Act 2/2003 (Ley Orgánica 2/2003, de 14 marzo, complementaria de la Ley sobre la orden europea de detención y entrega), supplementing it. Council Framework Decision on the execution on the freezing of property and evidence in the European Union 2003 was included in the Spanish law by

the Act on implementation of the European Union decisions of freezing property and providing evidence in criminal proceedings 18/2006, and complemented by the Organic act 5/2006 (Ley Orgánica 1/2008, de 30 de julio). Council Framework Decision on confiscation of objects and property obtained by criminal means, 2005 harmonized the legislation of EU Member States in matters of the spirit and application of confiscation. The Act 1/2008 on the execution of the EU documents and on the recognition of financial penalties determined the modalities of application of this document (Ley 1/2008, de 4 de diciembre, para la ejecución en la Unión Europea de resoluciones que impongan sanciones pecuniarias).

Council Framework Decision on the application of the principle of mutual recognition to decisions on the confiscation of 2006 authorized using of the existing rules of the law of European integration, when their use can simplify or facilitate the procedure of execution of punishment in the form of confiscation. Council Framework Decision 2009/299/JHA of 26 February 2009 complement the framework decision 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition of decisions rendered in the absence of the person concerned in court. Mentioned documents were implemented by Act 4/2010 on the execution of documents of the European Union on the recognition of confiscation (Ley 4/2010, de 10 de marzo, para la ejecución en la Unión Europea de resoluciones judiciales de decomiso).

The Treaty of Lisbon entered into force in 2009. The structure of the EU and its legal instruments occurred qualitative changes (in particular, the elimination of the concept of the three pillars, the redistribution of competence, failure of framework decisions, etc.). Treaty on the Functioning of the European Union of 2007 (Art. 82) enshrined the principle of mutual recognition of foreign judgments as a legal framework for cooperation between national law enforcement authorities within the EU.

The first directive in the field of legal assistance of criminal matters was adopted on December 13, 2011. The aim of the Directive 2011/99/EC of 13 December 2011 on a European warrant for the protection of the victim was to strengthen protection through appropriate measures by a competent court of one state for execution on the territory of another EU Member State where the person resides or temporarily resides.

The next instrument was the Directive 2014/41/EC on the European Investigation Order and the protection of a minimum level of procedural rights. The Directive covered a wide range of investigative actions.

At the same time the Directive 2014/42/EC on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union was published, which has updated the corresponding community tools.

Bearing in mind the 'fertility' of EU institutions, the Spanish Kingdom faced the problem of the transposition of the Union rules into its national legal order. The existing practice of a single response on the Community documents would mean great normative activities. It was necessary to take a few special laws, as well as amendments to the Organic act on the Judiciary system, the Criminal Code and the Criminal Procedure Code.

Therefore, the Spanish authorities decided to improve the legislative technique, combining implementation document. As the result the transposition of Community acts was made at the same time, through the adoption of Act 23/2014 on the mutual recognition of judgments in the European Union (Ley 23/2014, de 20 de noviembre, de reconocimiento mutuo de resoluciones penales en la Unión Europea).

At the same time, the Act 23/2014 did not include the above mentioned two directives of 2014. So, Directive 2014/42/EC had the transposition deadline - October 4, 2015. The Organic act 1/2015 (Ley Orgánica 1/2015, de 30 de marzo, por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal) was adopted for its implementation, which amended the Criminal Code of Spain, and the Act 41/2015, renewing the Criminal Procedure Code (Ley 41/2015, de 5 de octubre, de modificación de la Ley de Enjuiciamiento Criminal para la agilización de la justicia penal y el fortalecimiento de las garantías procesales).

In Directive 2014/41/EC of the European warrant the detention period of transposition was appointed on May 22, 2017; it has not been implemented yet.

The Act of 2014 provides for a special procedure of the inclusion of each new Community document into the Spanish law order. It establishes a scheme which is easy to adapt to the future

directives in this area, and prevents the continuous reform of the Organic act on the Judiciary, if it to compare to the old practice of individual transposition.

Spain is moving towards 'single' implementation of secondary law of the EU.

Let's start with the Regulations. As it's known, regulations are directly applicable in the territory of States on the date of their entry into force.

Spain actively works on the implementation of the Regulations, resulting its legislation into conformity with EU law.

So, Spain implemented Regulation 3677/90 with the help of four different regulations: a) Circular of 19.12.1991 № 1029/1991; b) Order of 15.11.1994; c) Law of 10.01.1996; d) of the Decree of 6.06.1997 № 865/1997, which specifies the provisions of the law of 01.10.1996.

Regulation 1346/2000 on insolvency proceedings was carried out through the adoption of the Act 22/2003 on Bankruptcy. The Act included a number of provisions on transnational bankruptcy to eliminate obstacles to the application of Community rules in Spain.

Sometimes the Spanish authorities apply for suspension of certain provisions of the regulations in the country. As an example, Regulation 2011 on freedom of movement of workers within the Community. Due to serious disturbances on the labor market, Spain July 22, 2011 notified the Commission that it decided to re-introduce restrictions on access to the labor market for workers from Romania.

Spain invoked 'the need for urgent measures in connection with the seasonal situation in the agricultural sector'. The European Commission adopted a decision to suspend the application by Spain of Articles 1-6 of Regulation № 492/2011 to Romanian workers.

Directives. The Directive is obligatory for each Member State to which it is addressed, in relation to the expected result, but it maintains the freedom to choose the forms and methods of action for the national authorities.

The provisions of the directive should be implemented in the legal system of the Member States. According to R. Muellerat, proper implementation requires accurate, clear and transparent regulations so that everyone can understand their rights and responsibilities. The implementation should be made in full, avoiding ambiguity or introducing foreign legal categories which can complicate its implementation, making direct reference to the directive in its preamble, as well as the position of all canceled due to these norms (Mullerat, 2010: 29).

A high degree of cooperation of state bodies in the process of implementation of the directives is characterized for Spain.

Thus, Council Directive 85/374 / EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the responsibility for poor quality products was implemented by the law of 1994 'On the responsibility for poor-quality products' in Spain.

The Organic act 25/2009 on the small business was passed for the implementation of Council Directive 123/2006 on services in the internal market of 22 December 2009. This Act introduced changes in more than 300 acts.

A direct link with the acts of a directive, as a rule, is clearly stated in the explanation of motives to the relevant law (exposición de motivos).

In general, the directive takes the attribute of direct effect when it is implemented in national law properly. However, the directive may have a direct effect, that evidenced by the practice of EC Court.

There are: a) the vertical direct effect of directives action (within the relationship between the state powers) (see Case Ratti) and b) horizontal direct effect (within the relationship between individuals) (see Case Marshall). So, in relation to the EU Directive 2000/31/EC the Act 34/2002 on the services of the information society', which allows to applicable directives directly was adopted.

Non-applicability of national legislation into conformity with the requirements of secondary law is a violation of EU law. For example, the implementation of the Framework Decision 'On the application of the principle of mutual recognition to confiscatory measures' 2006 should have been completed by 24 November 2008 (Art. 22). However, Spain implemented it only in 2010 (Ley 4/2010, de 10 de marzo).

The Spanish government received a large number of notifications from the European Commission about the irregularities in the process of implementation of the directives. 16 June 2011, the European Commission notified Spain of the identified deficiencies in its transposition of EU water law.

The Directive 2000/60/EC was implemented by the Water Decree of 2001 in Spain. In view of the fact that Spain has already received a notice from the Commission on this issue and has not taken the necessary measures, the Commission initiated proceedings against Spain in the EU Court (see EU Court Decision on October 4, 2012 (C 403/11)). At the same time, not only official representatives of the Spanish government did not agree the position of the EU Court, but also some Spanish scientists, who pointed to the federal structure of the country, complicating the process of implementation of Community rules in this case. In Spain, as it's stressed by M.Pacheco, when it's spoken about the implementation of directives affecting the competence of the Authority, it will be carried out by the authorities of the autonomous regions (Pacheco, 2008).

According to the European Commission, Spain's record in respect of improper implementation of the directives was 1%. Especially Spain improved the performance of the implementation of the directives in the field of the internal market; the deficit was only 0.8 %.

Decisions. The decision, as a rule, is an individual act, although there are examples of regulatory decisions (such as the European Parliament resolution on the Ombudsman 1994). The decision is binding in all its parts for those to whom it is addressed. As an example, the European Commission's decision of 11 October 2012, which was adopted to encourage the development of the fishing industry in Spain.

The Spanish Government may declare the decisions of the EU institutions, which are applied directly in Spain. So, August 16, 2012 Agency for Food Safety and Nutrition published a list of decisions of more than 40 such decisions. At the same time, there were made references to the eight national regulations containing rules on the implementation of their provisions.

4. Results

1. The primacy of international agreements in relation to national acts is recognized in Spain. In case of conflict with national law, international agreement is applicable. However, the Constitution of the Kingdom takes precedence over international norms.

2. The Constitutional Court of Spain addresses issues of European law, guided by the following provisions.

A) Article 93 of the Constitution is considered only as a 'procedural rule' governing the activities of Parliament and the Government for the implementation of agreements or documents issued by the international organizations.

B) Application of the national authorities of European law does not affect the competence of the Constitutional Court; its activity concerns only the protection of the Constitution.

C) The rules of European law must be applied in accordance with the distribution of powers between the central authorities and institutions of the autonomous communities in Spain. With respect to acts of the EU institutions, to which Spain has transferred some parts of its powers, control is carried out by Spanish courts of general jurisdiction.

3. In general, in Spain the rules of law of European integration are provided by the appropriate mechanism. However, the quality of implementation of the directive in Spain is uneven. European law has affected virtually all sectors of the domestic law of the country.

5. Conclusion

1. The analysis of the Spanish legislation and practice of the implementation of international norms shows that, in general, Spain adheres to moderate monistic concept of the relationship between international and domestic law. International treaties of Spain after their publication become a part of the domestic legal order of the country. The Constitution of 1978 (Art. 93-96) regulates the issues about the place of international law in the legal order of Spain in detail.

2. International legal documents as one of the sources of the Spanish legal order are indicated in Art. 96 of the Spanish Constitution and in Art. 1.5 Civil Code of Spain, enshrining the list of Spanish sources of law. The legal norms contained in international treaties are not directly applicable in Spain until they have become a part of domestic law by publication in the 'Official Gazette of the State'.

3. With regard to the implementation of the provisions of secondary law, Spain is moving towards 'single' implementation of secondary law. The following rule applies. The implementing rules should be issued by the same body as the national law governing the respective relations. At the same time, the implementation of EU law can be carried out by means of delegated legislation, the

adoption of a normative act of a lower level (for example, the decree of the Government instead of the law). The government is entitled to change the acts of a higher level in implementing.

References

Biriukov, 2014 – *Biriukov P.* (2014). Implementation of the EU law on the internal market in Spain. InterEuLawEa§t. Vol. 1. Issue 1. pp. 163-172.

Biriukov, 2015 – *Biriukov P.* (2015). On the accession of Spain to the European Communities. Journal of Advocacy, Research and Education. 2015. Vol.(3), Is. 2. pp. 121-127.

Brótons, 2003. – *Brótons A.R.* (2003). The Spanish Constitution and International Law. IX Spanish Yearbook of International Law (2003).

Raigón, 2012 – *Casado Raigón R.* (2012). Derecho Internacional. Parte General. Madrid: Tecnos.

Campos, 1977 – *Campos J.D.G.* (1977). Comentarios a las reformas del Código Civil. El nuevo Titulo Preliminar del Código y la Ley de 2 de mayo de 1975. Madrid: Tecnos. Vol. I. pp. 86-93.

Carrión, 1982 – *Carrión A.J.R.* (1982). Regulación de la actividad internacional del Estado en la Constitución // Revista de Derecho Político. № 15. pp. 95-118.

Cazorla, 2013 – *Cazorla M.I.T.* (2013). Monismo o dualismo en el sistema españiol recepción de tratados internacionales? Un análisis a la luz de la doctrina y la práctica española más reciente // Basic concepts of public international law. Monism and Dualism / editor M. Novakovic. Belgrade. pp. 661.

Iglesias, 1984 – *Iglesias R.* (1984). Problemas juridicos de la adhesion de Espana a la Comunidad Europea. Cursos de Derecho Internacional de Vitoria-Gasteiz.

Iglesias, Woelker, 1987 – *Iglesias R., Woelker U.* (1987) Derecho Comunitario, Derechos fundamentales y Control de Constitucionalidad: la decision del Tribunal Constitucional Federal Aleman de 22 de octubre de 1986. Revista de Instituciones Europeas. № 14.

Jimeno, 2006 – *Jimeno M.* (2006). La aplicación del derecho comunitario. Los principios de efecto directo y primacía. La cuestión prejudicial del art. 177 TCE.

Kelsen, 1923 – *Kelsen H.* (1923). Österreichisches Staatsrecht: Ein Grundriss entwicklungsgeschichtlich dargestellt. Mohr, Tübingen.

Kelsen, 1928 – *Kelsen H.* (1928). Die philosophischen Grundlagen der Naturrechtslehre und des Rechtspositivismus. R. Heise, Charlottenburg.

Legido, 1991 – *Legido S.* (1991). Las relaciones entre el derecho comunitario y el derecho interno en la jurisprudencia del Tribunal Constitucional. Revista Espanola de Derecho Constitucional. № 11. pp. 175-191.

Lloréns, 1984 – *Lloréns J.C.* (1984). Los tratados internacionales como fuente directa del ordenamiento jurídico en el artículo 96 de la Constitución española. Estudios en homenaje al Profesor Diego Sevilla Andrés. Historia, Política y Derecho. Valencia. V. I. pp. 207-220.

Lozano, 2006 – *Lozano G.M.T.* (2006). El Tribunal Constitucional ante el principio de primacha del derecho comunitario. Anales de derecho. Universidad de Murcia. 2006. № 24. pp. 319-352.

Martín, 1980 – *Martín A.M.* (1980). Cuestiones de Derecho internacional público en la Constitución española de 1978. Revista de la Facultad de Derecho de la Universidad Complutense. № 61. pp. 143-184.

Martín y Pérez, 2005 – *Martín J. y Pérez de Nanclares.* (2005). Hacia una nueva conncepción del artículo 93 de la Constitución: Comentario a la Declaratcon 1/2004 del Tribunal Constitucional. LVII REDI (2005-2). pp. 799-818.

Mullerat, 2010 – *Mullerat R.* (2010). How Spain Implements European law. Jean Monnet / Robert Schuman Paper Series.Vol. 10. № 2.

Pacheco, 2008 – *Pacheco M.* (2008). Proceso de transposición de Directivas. Derecho Comunitario. January.

Ridruejo y Palomar, 2007 – *Ridruejo J.A.P. y Palomar P.* (2007). Public International Law before Spanish Domestic Courts. The Legal Practice in International Law and European Community Law. A. Spanish Perspective. Leiden, Boston: Martinus Nijhoff Publishers.

Ridruejo, 1964 – *Ridruejo J.A.P.* (1964). La estipulación y la eficacia interna de los tratados en el derecho español. Revista Española de Derecho Internacional. № 17. pp. 39-59.

Rodríguez, 1984 – *Rodríguez L.I.S.* (1984). El proceso de celebración de los tratados

internacioonales y su eficacia interna en el sistema constitucional español (Teoría y práctica). Madrid.

Juste, 1978 – *Juste R.* (1978). El Derecho Internacional Público en la Constitución Española de 1978. Anuario de Derecho Internacional. 1977-1978. № 4. pp. 15-51.

Sans, 2002 – *Sans C.I.* (2002). Intervención parlamentaria en la celebración de tratados internacionales en España. Revista Electrónica de Estudios Internacionales. № 4. pp. 181.

Salcedo, 1991 – *Sans J.A.C.* (1991). Curso de Derecho Internacional Publico. Madrid: Tecnos.

Santaolalla, 1981 – *Santaolalla L.F.* (1981). La ley y la autorización de las Cortes a los tratados internacionales. Revista de derecho político. № 11. pp. 29-56.

Sperduti, 1979 – *Sperduti G.* (1979). Dualism and Monism: a Confrontation to be Overcome. Estudios de Derecho Internacional. Homenaje al Profesor Miaja de la Muela. V. I. Madrid: Tecnos. pp. 459-460.

Tremps, 1985 – *Tremps P.* (1985). Justicia comunitaria, justicia constitucional y tribunales ordinarios frente al derecho comunitario // Revista Espanola de Derecho Constitucional. № 13. pp. 157-181.

Verdross, 1937 – *Verdross A.* (1937). Völkerrecht. Berlin: J. Springer.