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ANALYSIS OF THE JUDICIAL CONTROL OVER THE CONSTITUTIONALITY OF LAWS AND TREATIES IN LEBANON

One could have thought that the debate over the issue of Treaty norms that contradict the terms of the Constitution in Lebanon is virtual since this question has never been raised after the Constitutional Council was created by Law no 250/93. The insertion of a Preamble with constitutional value by virtue of the aforementioned amendment, brought the Charter of the United Nations, the Universal Declaration of Human Rights (which thus became enforceable as a convention), and the United Nations conventions to the heart of the domestic legal order, confirming, if need be, the monistic view in Lebanese law.

In such context, the Constitutional Council has resolutely decided to integrate conventional law into the constitutional normative core. Consequently, it is conceptually difficult to evoke a conflict between a treaty and the Constitution that would result in an amendment or annulment of treaty provisions. In addition to that, it to be taken into account for a proper understanding of the issue of conflicting Treaty norms with the Lebanese Constitution:

- that the Lebanese Constitution is unique in that it is partly unwritten under what is commonly known as the «National Pact»;
- that the national legal order is dualistic, civil and religious, the latter with its own tribunals that apply their own laws «recognized» by the State, although some of their provisions contradict the terms of international conventions duly ratified by Lebanon;
- that religious communities are among the political holders of the right of referral to the Constitutional Council;
- that duly ratified treaties take precedence over domestic legal texts and are directly applicable before judicial and administrative courts, and before religious tribunals though this question is still a matter of debate;
- that an indirect control of treaties, in compliance with the Vienna Convention, is exercised by the legislator who has recourse to reservations in order to avoid a possible Treaty-Constitution conflict.

Therefore, the issue of the “Treaty-Constitution conflict” appears to be multifold due to the nature of the Constitution, to the complexity of the institutions and mechanisms in place

for control of constitutionality of laws, whether a concentrated control or possibly a diffuse control of constitutionality.

Our paper proposes to define the context of the control of constitutionality of laws and the acts to which it relates. And systematically examine to such end the possible emergence of a Treaty-Constitution conflict and what would be the means for remedy.