

Decision C-191/98

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Topics:

Meaning and scope of Article 101 of the Constitution; constitutional block and treaties on boundaries; international law and domestic law.

Piece of legislation subject to analysis:

Section 9 (partial) of Law 397 of 1997, related to the underwater cultural heritage.

Pursuant to this rule, the whole or parts of cities or cemeteries related to lost and ancient communities, the human remains, the shipwrecked vessels and their furniture, and any other property lying within them, or scattered on the seabed, any of which lies in the ground or subsoil of inland waters, territorial sea, continental shelf or exclusive economic zone, whatever its nature or condition, and the cause or time of the sinking or foundering, belong to the cultural or archaeological heritage of the Nation. The part questioned by the lawsuit brought to the Court was only the one underscored, as a result of which, any of the named items found on the continental shelf depths would be subject to his rule.

Reasons for constitutional questioning:

According to the complaint, the accused standard violates Article 101 of the Constitution, which sets forth the limits of the Colombian territory by determining that they can only be created and modified by international treaties, duly ratified by the Colombian government.

The lawsuit contended that by ratifying the Convention on the Continental Shelf of Geneva in 1958, which occurred after Law 9 of 1961 was passed, the Colombian government agreed that the country will exercise sovereignty over the continental shelf, only for the purposes of exploring and exploiting its natural resources, excluding other activities, as well as any other items found on that platform, i.e., archaeological or cultural assets, such as wrecks or ancient cemeteries.

Therefore, the plaintiff considered that instituting legal protection on cultural or archeological findings on the continental shelf, with disregard to the limits and restrictions set by international law, was not a legitimate way for the Colombian government to exercise its sovereignty, and doing so violated the Constitution.

CONSIDERATIONS OF THE COURT

Legal Problem:

Does Article 9 of Law 397 of 1997 oppose Article 101 of the Constitution by extending Colombia's sovereignty over the continental shelf beyond what is permissible under the Convention on the Continental Shelf, signed in Geneva in 1958, and ratified by the Colombian government?

Development:

In this situation, the Court specifically addressed the following questions: 1. What kind of international treaties are those referred to in Article 101 of the Constitution? 2. Are the treaties referred to in Article 101 *ibid*, the appropriate parameter for constitutional control of this type of legislation? 3. Is the Convention on the Continental Shelf of Geneva (1958) part of the agreements referred to in Article 101 of the Colombian Constitution? 4. Does the questioned clause (article 9) of Law 397 of 1997 violate the provisions of the aforementioned Convention on the Continental Shelf?

After developing the concepts of constitutional block, including its broad and narrow scopes, the Court ruled that international treaties ratified by Colombia belonging to the block of constitutionality in the broad sense, are part of the parameter to carry out the control of constitutionality of domestic law, so any counter to those treaties may be declared unconstitutional.

The Court reviewed the international norms and the jurisprudence of the International Court of Justice relating to the law of the sea, continental shelf and coastal states sovereignty exercised in these areas, finding no regulation regarding to property of historical, archaeological or cultural nature lying on the continental shelf of the states. Then, having into account that in public international law limitations on the sovereignty of coastal States should be expressly set forth, the Court concluded that the Colombian government, as well as that of any other state, is authorized to fill such gaps by its domestic legislation.

Decision:

As a result of this reasoning, the Court declared according to the Constitution the phrase "continental shelf" contained in Article 9 of Law 397 of 1997.