

Implementation of European Court of Human Right Judgments and State Sovereignty

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Abstract : The paper shows how the relationship between international law and national sovereignty is viewed through the implementation of European Court of Human Right judgments. Methodology: Conclusions are based on a survey of representatives of the legislative authorities and judges of the Krasnoyarsk region, the Rostov region, Sverdlovsk region and Tver region. The paper assesses the activities of the Russian Constitutional Court from 1998 to 2015 related to the establishment of the implementation mechanism and the Russian Constitutional Court judgments of 14.07.2015, № 21-P and of 19.04.2016, № 12-P where the Constitutional Court stated the impossibility of executing ECtHR judgments. I. Implementation of ECHR judgments by courts and other authorities. Despite the publication of the report of the RF Ministry of Justice on the implementation, we could not find any formal information on the Russian policy of the ECtHR judgment implementation. Using the results of the survey, the paper shows the effect of ECtHR judgments on law and legal practice in Russia. II. Implementation of ECHR judgments by Russian Constitutional Court. Russian Constitutional Court had implemented the ECtHR judgments. However, the Court determined on July, 14, 2015 its competence to consider the question of implementation of ECHR judgments. Then, it stated that the execution of the judgment [Anchugov and Gladkov case] was impossible because the Russian Constitution has the highest legal force on April, 19, 2016. Recently the CE Committee of Ministers asked Russia to provide 'without further delay' a compensation plan for the Yukos case. On November 11, 2016, Constitutional Court accepted a request from the Ministry of Justice to consider the possibility of execution of the ECtHR judgment in the Yukos case. Such a request has been made possible due to a lack of implementation mechanism. Conclusion: ECtHR judgments are as an effective tool to solve the structural problems of a legal system. However, Russian experts consider the ECHR as a tool of protection of individual rights. The paper shows link between the survey results and the absence of the implementation mechanism. New Article 104 par. 2 and Article 106 par. 2 of the Federal Law of the Constitutional Court are in conflict with international obligations of the Convention on the Law on Treaties 1969 and Article 46 ECHR. Nevertheless, a dialogue may be possible between Constitutional Court and the ECtHR. In its judgment [19.04.2016] the Constitutional Court determined that the general measures to ensure fairness, proportionality and differentiation of the restrictions of voting rights were possible in judicial practice. It also stated the federal legislator had the power 'to optimize the system of Russian criminal penalties'. Despite the fact that the Constitutional Court presented the Görgülü case [Görgülü v Germany] as an example of non-execution of the ECtHR judgment, the paper proposes to draw on the experience of German Constitutional Court, which in the Görgülü case, on the one hand, stressed national sovereignty and, on the other hand, took advantage of this sovereignty, to resolve the issue in accordance with the ECHR.

Keywords : implementation of ECtHR judgments, sovereignty, supranational jurisdictions, principle of subsidiarity

Conference Title : ICJI 2017 : International Conference on Judicial Independence

Conference Location : Paris, France

Conference Dates : June 25-26, 2017