
Non-Recognition and Non-Execution of the Decisions of International Judicial Bodies

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Abstract

Holding the state accountable for the commission of an internationally wrongful act can be carried out by the injured entity directly or by contacting the international judicial bodies. The very process of resolving a dispute in such bodies is significantly different from the domestic judicial process, and court decisions taken by the international bodies differ significantly from the decisions of domestic courts not only in the form, in which the responsibility is laid on the offending state, but also in the way, in which such decisions are implemented. Often, the international courts go far beyond the literal interpretation of those international treaties and agreements that form the basis of law enforcement, which raises the question of whether the states have the right not to recognize and not to execute decisions of the international judicial bodies. Taking into account that the creation of norms is carried out on the basis of coordination of the will of the contracting states, and the norms themselves are not contained in the power regulations, but in the treaties, it is quite possible to change and terminate them, including treaties on the establishment of international judicial bodies. The option of withdrawing from the treaty that has established such an international judicial body by denouncing it in order to refuse recognition of its mandatory jurisdiction is not excluded. If the state as a whole sees the feasibility of the further existence of this international judicial body and is interested in interacting with it, but considers its individual decisions as contrary to domestic interests or politically biased beyond the jurisdiction of the court, it has the right to resort to the extremities - to refuse of complying with the body's decision.

The right of the states to non-recognition and non-execution of the decisions made by the international judicial bodies is not enshrined in any international treaty or statute of an international justice body, but the states actually resort to such actions, and denying this right of a state or imposing a ban on such actions of the states is counterproductive, as it may give rise to a question if there is a need to participate in the international treaties that have established the relevant judicial bodies.

Keywords

International Responsibility, Internationally Wrongful Act, International Judicial Body, Non-Recognition of a Court Decision, Non-Execution of a Court Decision.

Introduction

The implementation of international responsibility does not occur automatically after the commission of an unlawful act, it shall be imputed to the state as a subject of international law. The victim subject of the international law has the right to act directly or through appropriate international judicial bodies when holding the offender accountable. Holding accountable under the international responsibility through the international judicial bodies has its own specific nature, which significantly distinguishes the international law enforcement process from the domestic one. The main difference is that at the domestic level, the legal force of decisions of the law enforcement bodies is not subject to doubt and discussion, and the decisions of the national courts that have entered into force are binding, regardless of whether the respondent is a private or public entity. It seems that one of the reasons for this is that the state does not directly participate in the creation of domestic judicial bodies, they are formed on the basis of the power separation principle, and not at the request or whim of the state as a legal subject. At the international level, judicial bodies are created by agreement between the states, which, in addition, by reaching an agreement, vest the bodies they create with a certain amount of authority and determine their competence. Similarly, the states act in the development and signing of sectoral international treaties governing certain types of relations included in the subject of international law - they determine the jurisdiction of disputes arising from the non-fulfillment or improper fulfillment of the international obligations under such treaties.

At present, the main problem causing the state's perplexity is that the decisions of the international courts often go far beyond the literal interpretation of those international treaties and agreements that form the basis of law enforcement.

On the one hand, this is quite logical, given that most of these treaties have been concluded for a long time, and there have been significant changes in the life of society since that time. It forces the courts to adapt relatively "outdated" norms to new realities. Those social relations that have arisen much later than the states reached the agreements on the protection of human rights shall somehow be settled using the existing international law. But, as T.N. Neshataeva rightly emphasizes, it is the use of evolutionary interpretation that contributes to the development of international law [1].

On the other hand, any broad interpretation of an international treaty inevitably gives rise to a free interpretation of the norms of international law, generated by the subjective view of judges on the content of international treaties. An attempt to clarify the meaning that the contracting states invested in certain norms may lead to a misunderstanding of this meaning, and therefore to a misinterpretation and law enforcement. A.S. Ispolinov notes that the potential opportunity for a court to go beyond the allotted frameworks in the form of erroneous, unpredictable, or extremely controversial decisions, as well as the loss of control over the court, are the main risks for the states [2, P. 43]. In this regard, the extremely urgent question now arises - do the states have the right not to recognize and not to execute decisions of the international judicial bodies?

Methods

The answer to such a complex question is not unambiguous and relates to the associated solution of other issues of the jurisdiction and competence of the international judicial bodies, the legal force of legal acts, on the basis of which they are vested with competence, and the extent of treaty freedom and will autonomy, when the states conclude such international treaties. The study of this problem is impossible without due attention not only to the existing norms of international law of a mandatory and recommendatory nature, but also to the decisions of the international bodies of justice administration.

The international treaties and agreements on the establishment of international judicial bodies (based on the example of the International Court of Justice of the United Nations and the European Court of Human Rights), as well as their Statutes, are primarily considered among the international legal acts requiring special attention.

An important part of the study of this issue will be the study of the domestic legislation of the individual states, which secures the right to non-execution or review of the decisions made by the international judicial bodies. To formulate conclusions, not only the content of these regulatory legal acts will be important, but also an analysis of the reasons for their appearance in domestic legal systems.

Results and Discussion

In order for the decisions of the international judicial bodies to have legal significance and be binding on the respondent states, the dispute resolution shall fall within the competence of this body, and the respondent state shall recognize the jurisdiction of this body in relation to disputes with its participation. Such consent can be drawn up in various ways, depending not only on the type of law enforcement body itself (ad hoc or permanent body), but also on the moment when such recognition is issued (at the stage of creation of this body or upon subsequent accession to the international treaty on its creation).

In accordance with the provisions of the Statute of the International Court of Justice of the United Nations, it is open to all states that are parties to the Statute (which are all the UN members, in accordance with Article 92 of the UN Charter), which can at any time declare that they recognize binding (ipso facto) the Court jurisdiction in relation to any other state that has accepted the same obligation in all legal disputes that relate not only to any issue of international law, but also to the treaty interpretation, existence of a fact that may constitute an internationally wrongful act, nature and amounts of compensation for damage caused. Art. 94 of the UN Charter entrusted each member of the Organization to execute the decisions of the International Court of Justice in cases with their participation. Refusal to execute decisions of the International Court of Justice of the United Nations gives rise to the right of the other party to the dispute to appeal to the UN Security Council, which can make recommendations or decide on measures to execute the decision, if it deems it necessary.

In addition to the International Court of Justice of the United Nations, it is also necessary to single out the law enforcement bodies acting on the basis of regional human rights treaties, as well as special dispute settlement bodies operating within the framework of various organizations.

Thus, the binding nature of judgments of the European Court of Human Rights for the states in cases, in which they are parties, is enshrined in Article 46 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950. The supervision of their implementation is entrusted to the Committee of Ministers.

In 1996, a new international judicial body - the United Nations International Tribunal for the Law of the Sea - was also created in accordance with the provisions of the UN Convention on the Law of the Sea 1982. The Tribunal was established to resolve disputes between the states regarding the application of the Convention and its interpretation on various issues and disputes relating to other treaties related to the Convention. This body, resolving disputes on the merits, essentially establishes the presence or absence of an offense with all related consequences and carries out a situational interpretation of the provisions of the Convention. A.L. Kolodkin and V.N. Gutsulyak emphasized that the Tribunal's most important right is the right to make decisions on "immediate release of the vessel and crew", if they are not released, despite the provision of "reasonable bail or other financial security" and if no agreement is reached between the flag state and the coastal state on the transfer of release issue to any court or arbitration within ten days from the detention time. [3] Article 33 of the Tribunal's Statute secured the finality and binding nature of its decisions for all parties to the dispute.

As we see, the states, being not only the main actors of international law, but also the creators of international legal norms, assume certain responsibilities by concluding treaties among themselves and thereby refuse to some extent of the freedom of discretion and sovereignty for the effective functioning of the international community as a whole. By concluding the above conventions and giving the international courts the competence to deal with various

disputes, the states have voluntarily committed themselves to recognize the binding nature of the decisions made by such bodies

But this is precisely the peculiarity of international law. Taking into account that the creation of norms is carried out on the basis of coordination of the will of the contracting states, and the rules themselves are not contained in the power regulations, but in the treaties, their change and termination is subject to the general provisions contained in the Vienna Convention on the Law of Treaties 1969 and in the special provisions of industry international treaties. And they stipulate the right to make changes or amendments, and the right to suspend, denounce and withdraw the states from the treaties. That is, if excessive “independence” in the activities of the international judicial body begins to cause concern of the states in connection with an extensive interpretation of the provisions of international treaties or the formation of their own policies, which are contrary to the policies of the states that have created such a body, the “creators” can make adjustments to the activities of a court. This can be done by amending an international treaty, limiting the competence of a court, or by more detailed specification of those norms that have been broadly interpreted, going far beyond the meaning laid down in them by the states. The general rule on amending the international treaties is contained in Article 39 of the UN Convention on the Law of Treaties, and special provisions on amendments can be found, in particular, in Article 69 of the Statute of the International Court of Justice of the United Nations, and in Article 312 of the UN Convention on the Law of the Sea.

The option of withdrawing from the treaty that has established such an international judicial body by denouncing it in order to refuse recognition of its mandatory jurisdiction is not excluded. A similar expression of extreme dissatisfaction with the decisions of the international judicial bodies has already taken place in modern history; in relation to the International Court of Justice of the United Nations, the USA, and then France withdrew their declarations recognizing the mandatory jurisdiction of this body in connection with the unfavorable results of the court's consideration of disputes.

As possible subsequent reactions of the states in case of their disagreement with the decisions of the international courts or dissatisfaction with the activities of the law enforcement bodies they created, A.S. Ispolinov also notes the possibility of terminating the court's activities by agreement between the states that have created the body, as well as refusal of creating new courts or recognizing the jurisdiction of existing ones [2, P. 46-52].

It should be noted that the state resorts to all the above actions only when a persistent rejection of the activity of the international court is formed - if its activity no longer meets the expectations and hopes that the state has had in this body when it has been created as a whole. That is, if the international judicial body has exhausted the trust limit and has gone so far beyond the goals of its creation, that the state no longer sees the need for its further work or further cooperation with it.

But such situations are possible when the state as a whole sees the expediency of further existence of this international judicial body, and interaction with it, but considers its individual decisions as contrary to domestic interests or going beyond the competence of the court, or politically engaged. In this case, the states are really not interested in breaking off relations, but they also consider it necessary to uphold their own interests. In such situations, the respondent states resort to the extremities - they refuse of executing a court decision. It is worth noting that the right to non-execution of a decision made by the international judicial body is not enshrined in any international treaty, and especially the statute of the court, which is quite logical, since the opposite would initially question the necessity and expediency of creating a law enforcement body, whose decisions are not binding at all. However, in the absence of such a right, the states either openly confront, refuse to recognize and fail to comply with a court decision, such as the USA in the case *Nicaragua v. USA* [4] and Iceland [5, 6], or resort to domestic procedures to formally substantiate their position and refusal of executing the decisions. In the second case, the states, as a rule, use two methods in order to prevent the international courts from leaving their competence and limit their interference in the internal affairs of the state and national legislation. The first method is the revision at the level of domestic law of the issue of primacy of the international treaties over the national law, the second method is the revision in each case of the decision of the international court by the supreme body of the domestic judicial power. The second method has already been used by the individual states that do not agree with the decisions made by the international judicial bodies, in particular, Venezuela, Chile, Italy, and the USA. As noted, the implementation of decisions made by the international judicial bodies in the USA is complicated by cases where the US Government recognizes such decisions as not just erroneous, but *ultra vires*, and therefore not binding [7]. In 2016, the Russian Federation also resorted to this method, transferring the issue of the possibility of implementing the judgment of the European Court of Human Rights in the case *Anchugov and Gladkov v. Russia* [8]. In its decision, the Constitutional Court of Russia recognized the decision of the ECHR as contradicting the provisions of the Russian Constitution. This entailed a failure to comply with a decision of the international judicial body.

Summary

From the point of view of the international law, the non-recognition and non-execution of the decisions made by the international judicial bodies, the compulsory jurisdiction of which has been recognized by the relevant states, are certainly a blow to the reputation of the court and raises doubts about the effectiveness of the judicial body, since the court's effectiveness is often evaluated in the scientific literature precisely from the point of view of execution of the decisions made by it [9] and the ability of the international judicial body to execute its decisions through the persuasion of national judicial bodies [10].

However, in this regard, we would like to draw attention to the fact that non-recognition and non-execution of the decisions made by the international judicial bodies is by no means a rule that should be actively combated, but, on the contrary, an exception to the general rule. If we compare the number of decisions made by the international judicial bodies with the number of decisions executed and not executed precisely because of refusal to execute them, we can conclude that such exceptions to the general rule are not a cause for serious concern. Rather, it is an effective way of interaction between the state and the international judicial bodies, or, according to A.S. Ispolinov, one of the forms of state control over the powers delegated to the courts [2, P. 51] In addition, it is rather difficult to judge the effectiveness of the judicial body by the number of decisions executed, since these decisions do not always contain the terms for their execution, or can be executed after a considerable amount of time. As noted by A.S. Smbatyan, this is a criterion that is checked statistically, but not objective for assessing the activities of the judicial body [11, P. 63].

Conclusions

Therefore, the solution to this problem does not seem to be in expansion of the judicial function of the court to include greater opportunities to verify compliance with its decisions, as suggested, for example, by Keller H. and Marty S. [12, P. 850]. Such an expansion of functions will not only lead to an additional burden on the courts, which are already overloaded, but will also lead to the exact opposite effect - a desire of the states to leave the jurisdiction of international courts. We believe that it is necessary to state that the right of states to non-recognition and non-execution of the decisions made by the international judicial bodies, without being enshrined in any international treaty or statute of the international judicial body, nevertheless, exists ipso facto. Denial of this right of the state and any prohibition of such actions of the states in the presence of a serious conflict between the need to comply with the decision of the international judicial body and the need to comply with the national interests can lead to negative consequences in the long term; namely, it may call into question the need for the states to participate in the international treaties, which have established the relevant judicial bodies.

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