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Baku State University

master student

gunay.mammedli99@gmail.com

LEGAL FORCE AND EXECUTION OF DECISIONS OF THE EUROPEAN COURT OF HUMAN RIGHTS

Abstract

Decisions of the European Court of Human Rights are binding on States parties to the European Convention on Human Rights. According to paragraph 1 of Article 46 of the Convention, the Contracting Parties are entitled to the Court's undertake to abide by their final decisions. The "binding" of the contract, it applies to the "states" that are party to the Convention. However, an international treaty will have some effects on states that are not parties to that treaty, in certain and limited circumstances acceptable. The parties to the ECHR must act in accordance with the provisions of this Convention and fulfill the obligations stipulated in the Convention is a requirement of international law.

Keywords: *execution of decisions, legal force of decisions, The European Court of Human Rights, ECHR, article 46 of the Convention, article 41 of the Convention*

Günay Məmmədli

Bakı Dövlət Universiteti

magistrant

gunay.mammedli99@gmail.com

Avropa İnsan Hüquqları Məhkəməsinin qərarlarının hüquqi qüvvəsi və icrası

Xülasə

Avropa İnsan Hüquqları Məhkəməsinin qərarları Avropa İnsan Hüquqları Konvensiyasına üzv olan dövlətlər üçün məcburidir. Konvensiyanın 46-cı maddəsinin 1-ci bəndinə əsasən, Razılığa gələn Tərəflər Məhkəmənin öz yekun qərarlarına əməl etmək öhdəliyini götürmək hüququna malikdirlər. Müqavilənin "məcburiyyəti" Konvensiyanın iştirakçısı olan "dövlətlərə" şamil edilir. Bununla belə, beynəlxalq müqavilə müəyyən və məqbul olan məhdud şəraitdə həmin müqavilənin iştirakçısı olmayan dövlətlərə müəyyən təsirlər göstərəcəkdir. AIHM-in tərəfləri isə bu Konvensiyanın müddəalarına uyğun hərəkət etməli və Konvensiyada nəzərdə tutulmuş öhdəlikləri yerinə yetirməlidirlər, bu, beynəlxalq hüququn tələbidir.

Açar sözlər: *qərarların icrası, qərarların hüquqi qüvvəsi, Avropa İnsan Hüquqları Məhkəməsi, AIHM, Konvensiyanın 46-cı maddəsi, Konvensiyanın 41-ci maddəsi*

Introduction

When talking about the legal force of the decisions of the European Court, it should be noted that the final decisions of the Court are binding for the states that are parties to the case. In the literature of international law, there is a difference of opinion that the decisions of the European Court have a binding precedent character.

In essence, the Court's decisions are declarative in nature. This opinion is confirmed by the Court itself in numerous decisions (for example, the decision of the European Court dated July 26, 2007 in the case "Tarverdiyev v. Azerbaijan". 5, 80). which of the means in the legal system to choose and use is, first of all, the business of the respective state. For example, in the decision of June 13, 1979 in the case of "Marx v. Belgium", the Court noted that the decision of the Court is basically declarative in nature and leaves to the discretion of the participating states which means to

use for the execution of the decision (69, 231). By the way, let's note that the Court does not have the authority to give specific instructions to the respondent-state. We believe that this is one of his weaknesses. The European Court adopts two types of decisions on the merits of the case: in the first type of decision, the Court is satisfied with the declaration of the violation of law, and this type of decision is declarative in nature. However, this does not mean that the declaratory judgment of the Court does not establish a binding obligation for the state party to the case. In some cases, declaratory judgments impose greater obligations on the State concerned than judgments awarding just compensation. For example, although the decision of the European Court in the "Tarverdiyev v. Azerbaijan" case was declarative in nature, in that decision the Court imposed on the state the duty of executing the decision of the national court (1). Declaratory judgments impose an obligation on the state that is a party to the case to eliminate the violation, restore the violated rights and, as far as possible, restore the situation as it was before (*restitutio in integrum*). In the second type of decisions, the Court imposes on the defendant-state the obligation to pay fair compensation to the injured party (Əliyev, 2012: 146-155).

In accordance with Article 41 of the Convention, when the State finds that any human right stipulated in the Convention has been violated, the Court provides "just compensation" to the injured party by its decision. That article states: "If the Court determines that the Convention and its Protocols have been violated, but the domestic law of the High Contracting Party allows only partial elimination of the consequences of this violation, the Court shall, if necessary, determine fair compensation to the injured party." This basically means that the Court imposes on the state the duty to compensate the material and (or) moral damage caused to the victim. However, the Court may not impose such a duty on the state; for example, in some cases, the declaration of the fact of violation by the Court itself is considered "fair compensation". For example, in the decision of November 15, 1996 in the case of "Chahal v. United Kingdom", (3) the Court stated that the declaration of violations is sufficient for the payment of compensation for moral damage (Hannum, 1992: 308).

According to Article 46 of the Convention, which is called "Binding force and execution of decisions", the High Contracting Parties undertake to implement the final decision of the Court in the cases to which they are parties. In its resolution No. 1268 of 2002 entitled "Implementation of the decisions of the European Court of Human Rights", the PACE emphasized that "the proper implementation of the decisions of the Court is necessary in terms of maintaining the high prestige it has today." On February 18-19, 2010, a ministerial conference was held in Interlaken within the framework of Switzerland's chairmanship of the Committee of Ministers of the Council of Europe in order to determine the future reforms of the European Court. The Interlaken Declaration was adopted as the conclusion of the conference. In the declaration, the necessity of full, efficient and short execution of the Court's decisions is particularly emphasized. By the way, one of the important innovations of the Declaration is that member states are recommended to consider the issue of sending national judges and, if necessary, independent lawyers to the Secretariat of the Court (Beddard, 1993: 408).

In accordance with Article 46 of the Convention, the obligation to execute the decision of the European Court is attributed to all relevant bodies of the respondent-state (63, 54). In the decision of the Plenum of the Supreme Court of the Republic of Azerbaijan dated March 30, 2006, it is stated that it is the duty of legislative, executive and judicial authorities to protect and protect human and civil rights and freedoms, as well as the implementation of decisions of the European Court aimed at ensuring those rights. The final decision of the court is sent to the Committee of Ministers, which supervises its implementation. As it can be seen, the function of monitoring the execution of Court decisions falls directly on the Committee of Ministers and not on the Court. (6)

After the decision is submitted to the Committee of Ministers in accordance with paragraph 2 of Article 46 of the Convention, this issue is immediately included in the agenda. The Committee of Ministers carries out supervision in three directions: firstly, supervision of the payment of the compensation determined by the Court (in case of delay, as well as interest) to the victim by the

defendant-state in case of a decision on fair compensation; secondly, control over the implementation of individual measures aimed at the restoration of violated rights by the defendant-state, its suspension and elimination if the violation continues, and the restoration of the situation before the violation; thirdly, monitoring the implementation of general measures aimed at preventing similar violations in the future.

Conclusion

What was said about the international legal status of the European Court summarizing, it can be noted that the European Court of Human Rights – justice who conducts the trial at the international level and the whole basis of the court is a specialized international judicial body with attributes. It was the innovation brought by the European Convention on Human Rights that for the first time, it provides for the appeal of individuals to the international judicial body was holding. Thus, the acceptance of the Convention is a violation of the international law of the individual was an important stage in the transformation of the generis subject. Today, the European Convention on Human Rights and the decisions of the European Human Rights Court act as the most important source of the emerging Council of Europe law.

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