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DOI <https://doi.org/10.32782/npnuola.v33.2023.7>*N. V. Mishyna***EUROPEAN COURT OF HUMAN RIGHTS' JUDGEMENTS
IMPLEMENTATION BY LOCAL AND REGIONAL AUTHORITIES:
RELEVANT PUBLICATIONS ON THE TOPIC¹**

Problem statement and its connection with important scientific or practical tasks. The role of local and regional authorities in the implementation of European court of the human rights (ECtHR) judgments is a relatively recent concern compared to the broader issue of ECtHR judgment implementation. For decades, matters related to the implementation of ECtHR judgments were generally deliberated by specialists, primarily in international law. Similarly, matters involving local government and local/regional authorities were discussed more generally, predominantly by constitutional lawyers. Notably, scholars such as E. Lambert, M. Saul, and others increasingly emphasize that local and regional authorities have been minimally involved in the execution of ECtHR judgments thus far. They explore pertinent practical examples and highlight the potential of these authorities.

Analysis of recent research and publications, which initiated the solution of this problem and on which the author relies, highlighting previously unresolved parts of the overall problem to which the article is devoted. The doctrinal sources in this domain can be divided into the groups based on 2 main criteria.

The first criterion pertains to the specific legal domain in which the researcher specializes. The majority of the cited authors possess expertise in international law, while a smaller portion, including the author of this project, are constitutional lawyers trained within the context of national legal traditions. This distinction significantly influences their perspectives, the structure of their arguments, and the formulation of their proposals, among other aspects.

The second criterion involves the subject matter that captures the researcher's interest.

As the topic is rather new in the contemporary legal science, the Ukrainian journals have only some publications, that only mention the problem (see [1–6]). That is why

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this articles covers the works of the foreign authors – including Lambert E., Mallory C., Murray R., De Vos Ch., Hennekens H. and others.

The aim of the article is to provide annotations for publications by authors who analyze academic works on the problems of implementing ECtHR judgments without the specific reference to the involvement of local and regional authorities. These annotations may prove useful for researchers investigating the role of local and regional authorities in implementing ECtHR judgments.

The main text. As for August, 2023, there are currently no academic articles or books dedicated precisely to the participation of local and regional authorities in the execution of judgments by the ECtHR. On one hand, this is not particularly surprising, given that the concept of involving these actors in this procedure is relatively new. On the other hand, this idea emerged as a response to the so-called 'implementation crisis,' and scholarly discussions encompass not only the engagement of local and regional authorities, but also other actors.

One such category of actors includes non-governmental organizations both at the national and local levels. Publications already exist that discuss their experiences in this domain and their potential contributions if they were to be engaged in the implementation of ECtHR judgments.²

Revisiting the second criterion, the majority of the publications cited in this project fall into one of two groups:

- the academic works on the problems of implementing ECtHR judgments (with or without specific reference to the involvement of local and regional authorities);
- the academic works on the analysis of the potential of the local and regional authorities in ensuring the human rights, mostly without specific reference to the implementation of the ECtHR judgments.

Academic works on the problems of implementing ECtHR judgments without the specific reference to the involvement of local and regional authorities are often referred to as 'visionary articles'. This category of academic works encompasses relevant sources that focus on the traditional hurdles of implementing ECtHR judgments, without specific mention of the participation of local and regional authorities. These sources provide insights into the fundamental concepts of implementing ECtHR judgments. Their authors assume that "[u]nder the European Convention on Human Rights (ECHR), a

² See, for example, this publications: Aysel Къзъксу 'Enforcing Rights Beyond Litigation: Mapping NGO Strategies in Monitoring ECtHR Judgement Implementation'; Elif Erken 'Non-governmental organisations and national human rights institutions monitoring the execution of Strasbourg judgments : an empirical perspective on Rule 9 communications' and 'The participation of non-governmental organisations and national human rights institutions in the execution of judgments of the Strasbourg Court : exploring Rule 9 communications at the Committee of Ministers'; Elisabeth Lambert Abdelgawad 'The Court as a part of the Council of Europe: The Parliament Assembly and the Committee of Ministers' in 'Constituting Europe : the European Court of Human Rights in a national, European and global context'; Agnieszka Szklanna 'The Standing of Applicants and NGOs in the Process of Supervision of ECtHR Judgments by the Committee of Ministers'; Lucja Miara and Victoria Prais 'The Role of Civil Society in the Execution of Judgement of the European Court of Human Rights'. The publications are presented in chronological order, and the list is not exhaustive.

notably robust mechanism was established to hold accountable those states that violate rights guaranteed under the Convention and Protocols." [7, p. 21]. They also address systematic issues and present the author's perspective on how to reform the system (see works of K. Dzehtsiarou, J. Jaskiernia, L. R. Helfer, E. Lambert, A. Nussberger, R. Spano and others).

Most of such publications address the international and national levels of implementation, while there are also some dedicated solely to the domestic level. Even in these cases, the authors refrain from making specific references to the involvement of local and regional authorities. However, the authors do highlight that 'there are numerous political, economic and social reasons why states may want to participate in a system of human rights protection' [8, p. 53] and consider all potential actors at that level³ – but not the local and regional authorities. Even when the authors examine the domestic level and emphasize that 'the state ... is not a single entity: it is composed of the executive (and a web of different ministries and departments), the legislature, and the judiciary' [9, p. 22] – they may fail to mention local and regional authorities.

Local and regional authorities are seldom mentioned, and when they are, there are no specific proposals about their current or potential roles in implementing ECtHR judgments. For instance, H. Hennekens points out that 'within the governmental organization there is a division of labour that causes differences in the mandate and powers of each part of government... the local government is the smallest public institution within a central government that acts in the general interest of public' [10, p. 512], though this thesis isn't further developed in his paper.

Since 2010, in legal literature, when authors address the 'implementation crisis,' it has become increasingly common for them to note that reforming the existing relationships among the bodies already involved in implementation is insufficient. They argue for the consideration of involving new actors in this process. E. Lambert in the Max Planck Encyclopedia of International Procedural Law:

– highlights the 'need for participation by more actors' [11]; and underlines, by agreeing with the other authors, that non-execution is often a political, not a legal issue [11, p. 3];

– explains that this approach will 'speed up the implementation process. Other actors also become involved in that process as the implementation stage has proved to be quite challenging' [11, p. 3];

– suggests that when incorporating new actors, 'coordination with external stakeholders brings real added value' [11, sec. 38];

– envisions 'the importance of synergies and reinforcement of domestic capacities needs to be illustrated by the complexity of the required reforms in numerous cases' [11, sec. 39];

³ See, for example, Alice Donald and Anne-Katrin Speck 'The Dynamics of Domestic Human Rights Implementation: Lessons from Qualitative Research in Europe'; Elisabeth Lambert Abdelgawad 'Domestic structures and the implementation of general measures: a synthesis of 38 national systems'.

– concludes that, despite some ‘institutional achievements regarding increased European and domestic capacities as well as synergies between various actors, there is still room for improvement [11, sec. 40]’.

Among the numerous compelling and valuable papers, the most influential ones, concerning the potential of local government bodies in the implementation of ECtHR judgments, are those authored by the scientists who demonstrate expertise in both international and constitutional law (as of one of the branches of the national law).

The first one is one of the papers of S.Greer, titled ‘What’s Wrong with the European Convention on Human Rights?’ (2008). The author makes parallels between the constitutional justice, this shows the vector of his interest – how the jurisprudence could be used to tackle the ‘implementation crisis’.

S. Greer starts with the fact, that ‘[t]he European Convention on Human Rights is widely regarded as the most successful experiment in the transnational, judicial protection of human rights in the world’ [12, p. 680].

Right after the introduction, he immediately shifts the focus of the attention to the constitutional law issues. He claims, that ‘[t]he underlying difficulty is the reluctance of the Strasbourg institutions, and others, to acknowledge that the Convention’s main function is not to provide remedies for each deserving applicant. It is, rather, to promote convergence in the operation of public institutions at all levels of governance in Europe by articulating an abstract constitutional model which member states should then apply in their own domestic constitutional systems. This article seeks to make the case for “constitutionalization” and to explore the policy implications’ [12, p. 680]. The author argues that this issue is of the high importance, because ‘the Council of Europe has failed to tackle persistent Convention violations in member states effectively’ [12, p. 691].

S. Greer explains his proposals of how to “domesticate” the European human rights debate and to “Europeanize” the national equivalent [12, p. 691]. In this section of the article he shows the waste potential of the constitutional law as one of the branches of the national legal system to go to the subnational level. The author of the article draws the parallels from the national to the European level, for example, underlining, that the ECtHR ‘has effectively become the constitutional court for greater Europe’ [12, p. 684] and discussing “Constitutional” v “Individual” Justice [12, p. 684].

The author strengthens his methodological approach by adding, that ‘[i]t is regrettable that the Council of Europe has never sought to identify national factors which produce low Convention violation rates in a systematic, and scientifically rigorous, manner. Indeed, the fact that it lacks a dedicated research department has been the subject of criticism’ [12, p. 695] and that ‘there is some evidence that two national factors are particularly important: a strong, deeply embedded culture of respect for rights on the part of national judicial and non-judicial public authorities, and effective judicial processes for challenging violations’ [12, p. 695].

The author concludes that ‘[t]he exercise of public power at every level of governance is formally constrained within this framework by a set of internationally justiciable,

constitutional rights [12, p. 691]. This opens the door to a variety of proposals, including suggestions on how the Congress of Local and Regional Authorities can be involved at the European level and how local and regional authorities can be engaged at the domestic level to address the implementation crisis.

Conclusion. It goes without saying that problems with the implementation of ECtHR judgments are primarily discussed by specialists in international law, who focus on the European dimension of these issues. Meanwhile, statistics from the CoE show that the crisis is worsening, and specialists are actively seeking ways to address it at various levels. The domestic level is receiving increasing attention in general, as are the actors engaged in human rights protection at this level. Gradually, legal experts specializing in national legal systems are paying more attention to these matters.

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Summary

Mishyna N. V. European court of human rights' judgements implementation by the local and regional authorities: relevant publications on the topic. – Article.

The aim of the article is to provide annotations for publications by authors who analyze academic works on the problems of implementing ECtHR judgments without the specific reference to the involvement of local and regional authorities. These annotations may prove useful for researchers investigating the role of local and regional authorities in implementing ECtHR judgments.

The author generalizes, that as for August, 2023, there are currently no academic articles or books dedicated precisely to the participation of local and regional authorities in the execution of judgments by the ECtHR. On one hand, this is not particularly surprising, given that the concept of involving these actors in this procedure is relatively new. On the other hand, this idea emerged as a response to the so-called 'implementation crisis,' and scholarly discussions encompass not only the engagement of local and regional authorities, but also other actors. One such category of actors includes non-governmental organizations both at the national and local levels. Publications already exist that discuss their experiences in this domain and their potential contributions if they were to be engaged in the implementation of ECtHR judgments.

Revisiting the second criterion, the majority of the publications cited in this project fall into one of two groups: the academic works on the problems of implementing ECtHR judgments (with or without specific reference to the involvement of local and regional authorities); the academic works on the analysis of the potential of the local and regional authorities in ensuring the human rights, mostly without specific reference to the implementation of the ECtHR judgments.

The author concludes, that problems with the implementation of ECtHR judgments are primarily discussed by specialists in international law, who focus on the European dimension of these issues. Meanwhile, statistics from the CoE show that the crisis is worsening, and specialists are actively seeking ways to address it at various levels. The domestic level is receiving increasing attention in general, as are the actors engaged in human rights protection at this level. Gradually, legal experts specializing in national legal systems are paying more attention to these matters.

Key words: local self-government, local and regional authorities, human rights, implementation of ECtHR judgments, urbanization, grassroots approach.

Анотація

Мішина Н. В. Виконання рішень Європейського суду з прав людини органами місцевого та регіонального самоврядування: актуальні публікації. – Стаття.

Метою статті є надання анотацій до публікацій авторів, які аналізують наукові роботи щодо проблем виконання рішень Європейського суду з прав людини, без конкретного посилання на участь місцевих та регіональних органів. Ці анотації можуть бути корисними для дослідників, які досліджують роль місцевих та регіональних органів у виконанні рішень Європейського суду з прав людини.

Автор узагальнює, що на серпень 2023 року немає академічних статей чи книг, приурочених саме до участі місцевих та регіональних органів у виконанні рішень Європейського суду з прав людини. З одного боку, це не дуже дивно, оскільки концепція залучення цих суб'єктів до цієї процедури є відносно новою. З іншого боку, ця ідея виникла відповідно до так званої "кризи виконання", і наукові обговорення охоплюють не лише залучення місцевих та регіональних органів, а також інших суб'єктів. До цієї категорії суб'єктів входять неправління організації як на національному, так і на місцевому рівнях. Вже існують публікації, що обговорюють їхні досвіди у цій сфері та їхні можливі внески, якщо вони б були залучені до виконання рішень Європейського суду з прав людини.

Повертаючись до другого критерію, більшість публікацій, які цитуються в цьому проєкті, поділяються на дві групи: наукові роботи щодо проблем виконання рішень Європейського суду з прав людини (з чи без конкретного посилання на участь місцевих та регіональних органів); наукові роботи щодо аналізу потенціалу місцевих та регіональних органів у забезпеченні прав людини, переважно без конкретного посилання на виконання рішень Європейського суду з прав людини.

Автор приходить до висновку, що проблеми виконання рішень Європейського суду з прав людини обговорюються переважно фахівцями у галузі міжнародного права, які зосереджуються на європейському вимірі цих питань. У той час як статистика від Ради Європи свідчить про погіршення кризи, фахівці активно шукають способи вирішення цієї проблеми на різних рівнях. Національний рівень загалом отримує все більше уваги, так само, як і суб'єкти, які займаються захистом прав людини на цьому рівні. Поступово юридичні експерти, які спеціалізуються на національних правових системах, приділяють більше уваги цим питанням.

Ключові слова: місцеве самоврядування, місцеві та регіональні органи влади, права людини, виконання постанов ЄСПЛ, урбанізація, підхід "знизу вгору".