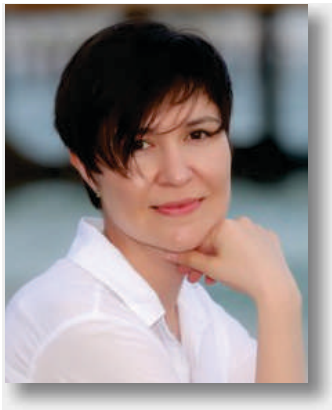
ENFORCEMENT MECHANISMS OF DECISIONS OF INTERNATIONAL COURTS

BARTOSZ ZIEMBLICKI,
PhD., Assistant Professor,
Department of Economic Law,
Wroclaw University of Economics
(Wroclaw, Poland)



YEVGENIA ORALOVA,
LLM, senior lecturer,
Department of International Law,
M. Narikbayev KAZGUU University,
(Nur-Sultan, Kazakhstan)

This article discusses the problems with enforcement of decisions of international courts. The issue of compliance by states with decisions of international courts is critical for the whole system of international law. If states cannot rely on law and have it clarified and enforced through courts' judgements, international law would become useless, disregarded, avoided and replaced by economic or military pressure or force. There exist a variety of different enforcement mechanisms in courts with global (International Court of Justice, World Trade Organization Dispute Settlement Body) and regional (European Court of Justice, Economic Court of the Commonwealth of Independent States, Court of Eurasian Economic Union) reach. Basically every international court has got some type of formal enforcement mechanism, even if it is only political in nature. But none can be called very effective and in particular – efficient. Some of them are equipped with economic sanctions (suspension of concessions, penalty payment, lump sum). They are not used often though. One should note that records of compliance with decision of courts which are able to impose sanctions are also far from being perfect. In particular, it seems that wealthy states can simply afford bearing economic sanctions without execution of the court decision. They therefore "buy themselves out" of their legal obligations. There is no doubt that for the sake of international legal certainty and stability it is desirable that international community pays more attention to improving the mechanisms for enforcement of decisions of international courts.

Keywords: enforcement of decisions of international courts, compliance with decisions, international court, judgements, enforcement, implementation, International Court of Justice, European Court of Justice, World Trade Organization Dispute Settlement System, Economic Court of Commonwealth of Independent States, Court of Eurasian Economic Union.

1. Introduction

Enforcement of decisions of international courts is obviously more difficult than of those made by domestic courts. In domestic jurisdiction there is a complete system of dispute settlement, including a system of compliance and enforcement.[1] As J.S Warioba puts it - 'In a domestic setting there is some degree of certainty of compliance with and enforcement of a binding decision of a court.[2] In international law the judicial system is not quite as elaborate as in domestic law. There is no hierarchy of courts, no supreme court, even no right to appeal in most cases.[3] One should also mention about the distrust to the impartiality of the composition of judges – there is an enormous political influence in this regard. In particular the institution of *ad hoc* judges may suggest that without a judge from a state which is party to the dispute, it will not be treated fairly. The practice of voting by *ad hoc* judges seems to justify the concerns – they rarely decide against their state of nationality.[4] But what is the most characteristic for international courts with regard to enforcement of decisions is that in international law there is no 'world court bailiff' or similar organ which has means and authority to effectively enforce judgements and even use force if necessary. International law is simply not well suited to an enforcement mechanism, which is a consequence of the principle of sovereign equality of states traced back to the Peace of Westphalia.[5] It is idealistic to think that any world enforcement mechanism can make for example the United States comply with a court's decision, unless the United States wants to do that.[6] Since analyzing all international courts is a too big task to carry it out in a single journal article, the authors selected four courts which significantly differ from each other, to present various existing mechanisms. The International Court of Justice (ICJ) has global reach and universal jurisdiction. The World Trade Organization (WTO) Dispute Settlement Body (DSB) also has global reach, but deals only with trade or trade related disputes. The Economic Court of the Commonwealth of Independent States (CIS) deals with economic disputes and is limited to states of northern Asia. The Court of Justice of the European Union (CJEU) today handles cases not limited only to economic activity of states and the members include 27 western European states. The Court of the Eurasian Economic Union is supposed to be quite important institution within the Eurasian integration community.

2. Enforcement Mechanisms in Global International Courts

It is not true that international law does not have any mechanisms for enforcement of judgements at all. In case of the International Court of Justice the only provisions which deal with that is Article 94 of the United Nations Charter. It provides in section 1 that "Each Member of the United Nations undertakes to comply with the decision of the International Court of

[1]Warioba J.S. Monitoring Compliance with and Enforcement of Binding Decisions of International Courts, Max Planck Yearbook of United Nations Law, vol. 5, 2001, p. 41.

[2]Ibidem, p. 42.

[3]Ibidem, p. 45.

[4]Ibidem, p. 46.

[5]Ibidem, 47-48 pp.

[6]Ibidem, p. 51.

Justice in any case to which it is a party". Section 2 adds that "If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment." It is limited to peaceful measures though[7] and the Security Council should not revise the decisions of the ICJ.[8] The wording of this article determines that only judgements are enforceable, only the creditor state may seek recourse and, most importantly, the Security Council has got a discretion whether to act, and if so, what measures to apply.[9] For that reason already at the San Francisco Conference there were concerns regarding the independence of the ICJ in relations with the Security Council.[10] C. Schulte argues that it might be wiser to establish an automatic procedure for monitoring compliance rather than enforcement.[11] A. Tanzi claims that since there is no organized machinery to enforce judgements of the ICJ, self-help remains prominent measure to enforce judgements.[12] In practice Article 94(2) of the United Nations Charter is invoked very rarely (in *Anglo-Iranian* case,[13] *Nicaragua* case[14] and *Bosnia-Herzegovina* case[15]).

There are no steps that the ICJ can take itself in the event of non-compliance with its decision. The Security Council is the only institutional means of enforcement in the UN system and at the same time is the supreme political organ of the organization.[16] Article 60 of the Statute reads: The judgment is final and without appeal. According to Article 61 of the ICJ Statute, the Court has exclusive competence of review of judgements. Under section 3 it may "require previous compliance with the terms of the judgment before it admits proceedings in revision." Apart from that, it has no competence to enforce compliance.

In *Anglo-Iranian* case the problem of enforcement concerned provisional measures. Article 94(2), as mentioned, refers only to judgements and not provisional measures, therefore jurisdiction of the Security Council was in that case contested. In the *Nicaragua* case the President of the Security Council considered the resolution regarding application of Article 94(2) of the United Nations Charter as not adopted due to the veto by the US. Nobody supported the US, but some states abstained, nevertheless for political and not legal reasons, as some of them expressed.[17]

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[7]Schulte C. Compliance with Decision of the International Court of Justice, Oxford University Press, Oxford, 2004, p. 47.

[8]Ibidem, 48-52 pp.

[9]Llamzon A.P. Jurisdiction and Compliance in Recent Decisions of the International Court of Justice, EJIL 2007, vol. 18, no 5, p. 822.

[10]Tanzi A. Problems of Enforcement of Decisions of the International Court of Justice and the Law of the United Nations, 6 EJIL (1995), p. 541.

[11]Schulte C., p. 58-60.

[12]Tanzi A., p. 539.

[13]Anglo-Iranian Oil Co. (United Kingdom v. Iran), initiated in 1951, available at https://www.icj-cij.org/en/case/16 (accessed 18 December 2019).

[14]Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), initiated in 1986, available at https://www.icj-cij.org/en/case/70 (accessed 18 December 2019).

[15]Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), initiated in 1993, available at https://www.icj-cij.org/en/case/91 (accessed 18 December 2019).

[16]Tanzi A., p. 542.

[17]Ibidem, p. 545.

Nicaragua submitted the case also to the UN General Assembly. According to Article 10 of the UN Charter "the General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters." The exception in Article 12 reads: "while the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests." So, as long as the case of non-compliance is not pending before the Security Council, the General Assembly may discuss it. Resolution was adopted by 94 votes to 3 (three votes against belonged to the US, Israel, Salvador) with 47 abstentions.[18] The textual interpretation of the Charter makes it clear that both the Security Council and the General Assembly may discuss and make recommendations on the merits of disputes. But when applying the teleological interpretation they should not do that if it may interfere with the judicial authority of the ICJ due to the principle of separation of powers.[19]

As for voting in the Security Council the critical question is whether matter in Article 94(2) is a procedural matter under 27(2) which requires 9 votes majority. Even if not, and if voting is based on Article 27(3), the party to a dispute should abstain from voting. One could argue that resolution based on Article 94(2) is procedural because of the General Assembly Resolution 267(III) of 14 April 1949, which lists procedural issues and include "decisions to remind members of their obligation". However resolutions of the General Assembly are obviously not binding for the Council.[20]

A member of the US delegation claimed that the Security Council may proceed based on the Article 94(2) only if non-compliance may result in threat to the world peace. This view is hardly supported by the wording of the Article. It is also not supported by preparatory works of the Charter nor is non-compliance on the list of cases of aggression in the General Assembly Declaration on the Definition of Aggression of 14 Dec 1974.[21] In practice the rule that the party to the dispute should abstain from voting in the Security Council is simply not observed.[22] One should also keep in mind that the ICJ determined that the US violated the prohibition of the use of force, prohibition to violate the sovereignty of another state and prohibition of intervention in the affairs of another state. Obviously the *Nicaragua* case concerned international peace.[23]

As for the World Trade Organization dispute settlement system,[24] it is generally praised by scholars as very effective. For example W.J. Davey estimated that the compli-

[18]Ibidem, 546-547 pp.
[19]Ibidem, 547-548 pp.
[20]Ibidem, 547-551 pp.
[21]Definition of Aggression, United Nations General Assembly Resolution 3314 (XXIX), available at https://legal.un.org/avl/pdf/ha/da/da_ph_e.pdf (accessed 18 December 2019).
[22]Tanzi A., p. 558.
[23]Ibidem, 559-560 pp.
[24]Quasi-judicial body is called the Dispute Settlement Body.

ance rate in the first 10 years was as high as 83%.[25] But he is much less enthusiastic about WTO results, when the timeline of compliance is taken into account. He argues that in some types of cases (namely disputes concerning trade remedies, agriculture, subsidies and SPS agreement) compliance is often not timely. What was also noted is that timely[26]implementation of WTO decisions was much higher in case of the developing states – the main source of delays has been the United States. But also the EU has a record of long non-compliance. Exactly because of its delay in bringing its measures into conformity with the WTO law in the *Hormones* case[27] American companies lost faith in the system and stopped even lobbying for the US to initiate the proceedings regarding poultry products. Most long-term non-compliance cases in the WTO occurred between developed states.[28] *In US-Gambling* case[29] the US chose not to comply with the DSB decision for many years. Antigua and Barbuda has been authorized to suspend the concessions but did not do that, probably due to awareness that it will not affect the US trade policy.

WTO system is equipped with enforcement mechanism, which includes retaliation (suspension of concessions). However it has never been used under the GATT regime, and it WTO happens rarely: for example in *EC-Bananas,*[30] *EC-Hormones*, *US-FSC*[31] and *US-Byrd Amendment.*[32] In the infamous EC-Hormones case the retaliation has not caused change to EC policy for almost 9 years[33] Retaliation under the WTO rules is prospective only and therefore gives incentive to delay compliance. What is more, it is definitely not an effective tool in the hands of a small or developing country.[34] This is why they never use it, with the exception of Mexico in the *Byrd Amendment case*, but it was encouraged by actions of Canada and Japan. Since non-compliance problem pertains usually to the

[25]Davey W.J. The WTO Dispute Settlement System: the First Ten Years, 8 Journal of International Economic Law, 17, 2005, 46-48 pp.

[26]Davey W.J. Compliance Problems in WTO Dispute Settlement, Cornell International Law Journal, vol. 42, winter 2009, issue 1, 120-121 pp.

[27]DS26: European Communities — Measures Concerning Meat and Meat Products (Hormones), available at https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds26_e.htm (accessed 18 December 2019).

[28]Davey W.J. Compliance Problems in WTO Dispute Settlement, Cornell International Law Journal, vol. 42, winter 2009, issue 1, p. 123.

[29]DS285: United States — Measures Affecting the Cross-Border Supply of Gambling and Betting Services, available at https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds285_e.htm (accessed 18 December 2019).

[30]DS27: European Communities — Regime for the Importation, Sale and Distribution of Bananas, available at https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds27_e.htm (accessed 18 December 2019).

[31]DS108: United States — Tax Treatment for "Foreign Sales Corporations", available at https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds108_e.htm (accessed 18 December 2019).

[32]DS217: United States — Continued Dumping and Subsidy Offset Act of 2000, available at https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds217_e.htm (accessed 18 December 2019).

[33]Davey W.J. Compliance Problems in WTO Dispute Settlement, Cornell International Law Journal, vol. 42, winter 2009, issue 1, p. 124.

[34]Ibidem, p. 125.

developed states, one can draw a conclusion that states do not comply with decisions when they can afford to do that. There are also other explanations. T. Hofmann and S.Y. Kim argue that domestic economic actors involved in the WTO dispute play huge role in compliance with DSB decisions.[35] S. Rickard goes even as far as to argue that compliance with WTO decisions depends on form of government – non-compliance happens more often in states with majoritarian electoral rules and/or single-member districts.[36]

W.J. Davey recommends three changes in the WTO dispute settlement system to improve compliance: 1. instead of retaliation (suspension of concessions) use fines or damages (tying it to the size of country's economy), 2. sanctions should at least to some extent apply retroactively (from the moment of establishment of a panel), 3. sanctions should increase over time.[37] He also notes that setting the level of nullification or impairment should happen on an earlier stage of the proceedings.

3. Enforcement Mechanisms in Regional International Courts

In the European Union there is a enforcement mechanism, which pertains to infringement of the EU law by member states. There are three grounds for infringement proceedings: non-communication on transposition of the EU law, incorrect transposition of the EU law and incorrect application of the EU law. There are also three formal stages of the proceedings (other than with initiative by another member state):[38] letter of formal notice by the European Commission, issuance of a reasoned opinion by the European Commission and referral of the case to the ECJ (also for the 2nd time with a proposed penalty).[39] The enforcement measures, which include imposing a lump sum or penalty payment based on Article 260(2) of the TFEU, have always been used slowly and cautiously by the Commission. Despite hundreds of recorded breaches of the EU law, the Commission makes only a few 2nd referrals a year. By the end of 2016 only 32 such judgements have been made.[40] Ca. 90% of formal complaints concerning infringement of EU law are not taken any further.[41]

The number of infringement cases referred to the ECJ has been decreasing for a long time. Between 2007 and 2016 the number of such cases dropped from 212 to 31 annually.

[35]Hofmann T., Kim S.Y. The Political Economy of Compliance in WTO Disputes, unpublished manuscript, available at https://www.researchgate.net/profile/Sooyeon_Kim2/publication/228553874_The_Political_Economy_of_Compliance_in_WTO_Disputes/links/5572bf4008aeacff1ffadb4a.pdf (accessed 18 December 2019).

[36]Rickard S. Democratic Differences: Electoral Institutions and Compliance with GATT/WTO Agreements, 16 Eur. J. Int'l Rel. 2010, 714-717 pp.

[37]Davey W.J. Problems in WTO Dispute Settlement, Cornell International Law Journal, vol. 42, winter 2009, issue 1, 125-127 pp.

[38]Article 258 of the Treaty on the Functioning of the European Union, Official Journal C 326, 26/10/2012 P. 0001 – 0390.

[39]Hogarth R., Lloyd L. Who's afraid of the ECJ? Charting the UK's relationship with the European Court, Institute for Government, December 2017, p. 4.

[40]Falkner G. A casual loop? The Commission's new enforcement approach in the context of non-compliance with EU law even after CJEU judgments, Journal of European Integration, 2018, vol. 40, issue 6, p. 775.

[41]European Commission, Monitoring the Application of European Union Law 2016 Annual Report, 6 July 2017, Section IV.

The number of Court's decisions annually in such cases also dropped from 127 a year in 2005-2009, to 67 a year between 2010-2014. This is surprising, since neither has the Commission celebrated any improvement in compliance with EU law by states, nor has it officially changed its strategy. One should also keep in mind that during that time the number of member states increased.[42]

G. Falkner notes that the Commission is relatively less and less likely to initiate infringement proceeding in the ECJ not only because of its shrinking resources and outsourcing of enforcement to private litigants and national courts, but also because of the doubts that in this way the infringements can be stopped against the will of the relevant government.[43] He further explains this trend by the following factors. Firstly, ever since the Treaty of Lisbon entered into force, the Commission may ask for fines already in the first Court proceedings in case of failure by a state to notify of directive implementation. This has a deterring effect, but one should keep in mind, that simple notification is easy, while real implementation may have failed. Secondly explanation could be that the Commission started using out-of-court methods to solve problems and that includes such mechanisms as 'EU Pilot' and 'SOLVIT'. Thirdly the Commission does not have adequate resources to profoundly investigate proper implementation and application of EU law by states. Fourthly it seems that the Commission changed its attitude and tries not to overuse the infringement procedure. Also possibly it is explained by the increase in number of preliminary rulings, which to some extent may be regarded as an alternative mechanism for enforcement of the EU law.[44]

Very similar explanation has been provided by R. Hogarth and L. Lloyd. According to them the decrease of infringement proceedings referred to the ECJ is caused by: 1. attempts to resolve dispute in alternative ways (e.g. Pilot scheme), 2. fines for non-transposition can be imposed already in the first case before the ECJ, 3. Commission pushes for enforcing EU law using domestic legal remedies, 4. Commission's resources have not increased while the membership of the EU has.[45]

Apart from the fact that the Commission uses financial sanctions less and less often, one should also pay attention to the fact that member states often choose to pay the fines instead of changing their behavior. They sometimes treat such fines as a sort of 'infringement tax', which proves ineffectiveness or inadequateness of sanctions. Also sanctions cause discontent of the citizens of such a state, but their anger is in fact directed not at their state but rather at the EU.[46] As Bieber and Maiani noted, 'putting too much stress on sanctions holds an inherent risk for the essentially cooperative relations between the EU and its member states'.[47]

As noted above one of the factors affecting compliance with decisions of international courts is economic power of states – whether a state can afford non-compliance. But

[42]Falkner G., p. 771.
[43]Ibidem, p. 770.
[44]Ibidem, 773-774 pp.
[45]Hogarth R., Lloyd L., p. 11.
[46]Falkner G., p. 776.
[47]Bieber R., Maiani F. Enhancing Centralized Enforcement of EU Law: Pandora's Toolbox?, Common Market Law Review 51 (4), 2014, p. 1092.

obviously the object of the dispute is of relevance too. For example in the ECJ most infringement cases concern regulations of internal market, health and consumers and environment.[48] But it is the environment disputes that are by far the most likely to end up in the Court, which is explained by high costs of implementation, but also by the fact that it is civil society organizations rather than powerful business entities which lobby for environmental protection and try to enforce its regulations, having limited resources to litigate.[49] In fact in such cases sometimes it is simply very difficult to comply.

Compliance supporting mechanisms are also weak in case of the Economic Court of the Commonwealth of Independent States. First of all, the legal nature of decisions is not clearly defined in regulatory documents of the Court. According to the first part of the paragraph 4 of the Regulation on the Economic Court of the Commonwealth of Independent States, the Court makes a decision establishing the fact of violation of agreements and determining "the measures that *are recommended to be taken* by the relevant state in order to eliminate the violation and its consequences."[50] Such a provision is confirmed by the wording of the resolute part of the decision of the Economic Court of 30 March 1995 № 04/95 on improper implementation by the Government of Kazakhstan of Agreements between the Government of Belarus and the Government of Kazakhstan on the supply of grain of the 1993 crop and repayment of debt to Belarus. The Court decided to "*recommend* the Government of the Republic of Kazakhstan to take measures to repay debt to the Republic of Belarus within three months."[51] It is obvious, that using of the term "to recommend" in the Court's act raises reasonable doubts about strict legal character of the decision. Nevertheless, the second part of the paragraph 4 designates that "The state in respect of which the decision of the Court has been made *ensures its execution*" leaving the order and means of implementation to the discretion of the CIS member states. At the same time, the abovementioned decision does not require the state to provide the court with information on the execution of this Court's act. As a result CIS member states do not seem to consider themselves legally bound by Court's decisions.

The second reason of non-compliance is the absence of any formal enforcement mechanism within the structure of the CIS. As Gennady M. Danilenko denotes, "the statutory documents of the Court contain no provisions envisioning sanctions for non-compliance with judgments".[52] Despite the fact that there is a formal possibility of an interested state to refer the question of non-compliance with the Court's decision to the Council of Heads of

[48] Hogarth R., Lloyd L., p. 14.

[49] Ibidem, 15-16 pp.

[50] Regulation on the Economic Court of the Commonwealth of Independent States, Approved by the Agreement of the Council of Heads of State of the Commonwealth of Independent States of 6 July 1992, available in Russian at: http://sudsng.org/download_files/docs/dk17s021p_01.pdf (accessed 18 December 2019).

[51] Decision of 30 March 1995 №04/94 on improper implementation by the Republic of Kazakhstan of the Agreement between the Government of the Republic of Kazakhstan and the Government of the Republic of Belarus on the supply of grain of 1993 crop and assistance in its harvesting of 4 August 1993, available in Russian at: http://sudsng.org/download_files/rh/1995/Rh_04_95_300395.pdf(accessed 18 December 2019).

[52] Danilenko G.M. The Economic Court of the Commonwealth of Independent States, 31 N.Y.U.J Int. L. and Pol. 897 (1999), p. 907.

States for taking enforcement measures,[53] this political organ is able only to recommend a particular method of dispute-settlement on the consensual basis and the losing state is able to veto the decision.[54] So, the absence of remedies for non-compliance[55] allows "losing states to ignore rulings of the Economic Court".[56] We believe, that this ambuguity of the legal nature of Court's decision and weakness of the enforcement procedure caused the unpopularity of the Economic Court of the CIS: the last time Court made a decision on the lawsuit of one state to another in 2008.[57] And now the Court works in *ad hoc* regime with the Chairman as the only one who fulfills his duties on the permanent basis.[58]

As to the Court of the Eurasion Economic Union (the EAEU Court) as a relatively new organization with clear features of supranationality, we would like to mention some key points without deep analysis and to live the room for the next research paper. Firstly, according to paragraph 99 of the Statute[59] acts of the EAEU Court made in accordance with its competence are binding on the parties to the dispute. Secondly, as Zhenis Kembaev underlines, in the EAEU Court just like in the Economic Court of the CIS, the parties of the dispute determine the form and method of enforcement of the judgment by themselves[60] that may lead to non-efficiency of these judgments in domestic legal systems of EAEU member states. For instance, the Supreme Court of the Republic of Kazakhstan adopted the normative decree "On some issues of application of customs legislation by the courts" according to which the acts of the EAEU Court "shall be taken into consideration by the courts when resolving disputes related to the application of the rules of the EAEU law" that was the subject of consideration by the EAEU Court.[61] However, in our humble opinion "to take into consideration" formula does not fully correspond the principle of legal certainty and is not clear enough for individuals and legal entities who may be interested in enforcement of EAEU Court's decision within domestic legal system. Unfortunately, there is no

[53]Regulations of the Economic Court of the Commonwealth of Independent States Approved by the Resolution of the Plenum of Economic Court of the Commonwealth of Independent States on 10 July 1997, No. 2., available in Russian at: http://sudsng.org/download_files/statdocs/regulations_2013.pdf (accessed 18 December 2019).

[54]Kembayev Z. Legal Aspects of the Regional Integration Processes in the Post-Soviet Area, Springer Science & Business Media, 2009, p. 68.

[55]Hooghe L. Measuring International Authority, Oxford University Press, 2017, p. 522.

[56]Danilenko G.M. The Economic Court of the Commonwealth of Independent States, 31 N.Y.U.J Int. L. and Pol. 897 (1999), p. 907.

[57]Decision of 18 April 2008 №01-1/3-06 on upon a statement of claim to the Government of the Russian Federation with a requirement to oblige the Government of the Russian Federation to recognize the ownership of the Republic of Kazakhstan on the property complex of the sanatorium Uzen, available in Russian at: http://sudsng.org/database/deed/117.html (accessed 6 March 2020).

[58]See on the official website of the Economic Court of the Commonwealth of Independent States, http://sudsng.org/press/economic-news/2081.html (accessed 6 March 2020).

[59]Appendix 2 to the Treaty on EAEU of 29 May 2014.

[60]Kembayev Z. The comparative study of functioning of the Court of the Eurasian Economic Union, Mezhdunarodnoe pravosudie (International justice), 2 (18), 2016, p.43.

[61]Normative Decree of the Supreme Court of the Republic of Kazakhstan "On some issues of application of customs legislation by the courts", 29 November 2019, №7, available in Russian at: https://egov.kz/cms/ru/law/list/P190000007S (accessed 6 March 2020).

specific legislation on the application of international judicial and quasi-judicial decisions in Kazakhstan. Zhenis Kembayev also notices that the enforcement procedure is quite similar to procedure in the Economic Court of the CIS that is obviously may lead to non-compliance with the decisions of the EAEU Court.[62]

4. Conclusions

The issue of compliance by states with decisions of international courts is critical for the whole system of international law. If states cannot rely on law and have it clarified and enforced through courts' judgements, international law would become useless, disregarded, avoided and replaced by economic or military pressure or force, which would affect the cooperation of the whole international community. International courts are generally equipped with enforcement mechanisms and they differ from each other greatly. In case of the ICJ the only option for the winning state is to address the Security Council, but it is up to the Council whether to take appropriate measures. In the WTO retaliation can be authorized, but it is prospective in nature and in practice wealthy states can afford paying for non-compliance. The case of the ECJ does not look much better – economic sanctions exist, but using them is time consuming and European Commission uses them less and less often, due to their ineffectiveness. In case of the Economic Court of the Commonwealth of Independent States it is doubtful if the decisions are even legally binding. Decisions of the EAEU Court are binding for parties of the dispute but the enforcement mechanism is still too weak. Overall the existing enforcement mechanisms of decisions of international courts must be assessed as weak and ineffective. Strengthening them and introducing new ones should be considered very desirable. In the view of the authors it is economic sanctions (suspension of concessions, penalty payment, lump sum), which are far from perfect, that constitute the most rational enforcement mechanisms. They just need to be more tailor-made and flexible. That includes adapting them to the economic wealth of the breaching state, increasing them over time and giving them retrospective effect.

Бартош Жемблицки, PhD, ассистент-профессор, Экономикалық құқық департаменті, Вроцлав Экономика Университеті (Вроцлав, Польша); Евгения Оралова, LLM, аға оқытушы, Халықаралық құқық департаменті, М.Нәрікбаев атындағы КАЗГЮУ Университеті (Нұр-Сұлтан, Қазақстан): Халықаралық сот шешімдерін орындау тетіктері.

Бұл мақалада халықаралық соттардың шешімдерін орындау мәселесі қарастырылады. Мемлекеттердің халықаралық соттардың шешімдерін орындауы мәселесі халықаралық құқықтың бүкіл жүйесі үшін ерекше маңызды болып табылады. Егер мемлекеттер құқыққа және оны түсіндіру мен сот шешімдерінде қолдануға сенім арта алмаса, онда халықаралық құқық пайдасыз болып қалады, еленбейді және оның орны экономикалық немесе әскери қысым жасаумен немесе күшпен алмастырылады. Жаһандық (Халықаралық Сот, Дүниежүзілік сауда ұйымының дауларды шешу

[62]Kembayev Z. The comparative study of functioning of the Court of the Eurasian Economic Union, Mezhdunarodnoe pravosudie (International justice), 2 (18), 2016, p. 43.

жөніндегі органы) және өңірлік (Еуропалық Одақ Соты, Тәуелсіз Мемлекеттер Достастығының Экономикалық соты, Еуразиялық Экономикалық Одақтың Соты) деңгейдегі соттарда орындауды қамтамасыз етудің әртүрлі тетіктері бар. Олардың кейбіреулері экономикалық санкциялармен жабдықталған (концессияларды тоқтата тұру, айыппұл төлеу, біржолғы төлем), бірақ олардың бірде-біреуі жеткілікті дәрежеде тиімді болып көрінбейді. Халықаралық қоғамдастықтың халықаралық соттардың шешімдерін орындауды қамтамасыз ету тетігін жетілдіруге көбірек көңіл бөлгені жөн.

Тірек сөздер: халықаралық соттардың шешімдерін орындау, шешімдерді орындау, халықаралық сот, шешімдер, орындау, жүзеге асыру, Халықаралық сот, Еуропалық Одақ соты, Дүниежүзілік сауда ұйымының дауларды шешу жүйесі, Тәуелсіз Мемлекеттер Достастығының Экономикалық соты, Еуразиялық Экономикалық Одақтың Соты.

Бартош Жемблицки, PhD., ассистент-профессор, Департамент экономического права, Вроцлавский Университет Экономики (Вроцлав, Польша); Евгения Оралова, LLM, старший преподаватель, Департамент международного права, Университет КАЗГЮУ имени М. Нарикбаева (Нур-Султан, Казахстан): **Механизмы исполнения решений международных судов.**

В настоящей статье рассматривается проблема исполнения решений международных судов. Вопрос соблюдения государствами решений международных судов является критическим для всей системы международного права. Если государства не могут полагаться на право и его толкование и применение в судебных решениях, международное право становится бесполезным, игнорируется, избегается и заменяется экономическим или военным давлением или силой. Существуют различные механизмы обеспечения соблюдения в судах с глобальным (Международный Суд, Орган по разрешению споров Всемирной торговой организации) и региональным (Суд Европейского Союза, Экономический суд Содружества Независимых Государств, Суд Евразийского Экономического Союза) охватом. Некоторые из них снабжены экономическими санкциями (приостановка концессий, уплата штрафа, единовременная выплата), но ни одна из них не представляется достаточно эффективной. Желательно, чтобы международное сообщество уделяло больше внимания совершенствованию механизма обеспечения исполнения решений международных судов.

Ключевые слова: исполнение решений международных судов, соблюдение решений, международный суд, решения, исполнение, реализация, Международный Суд, Суд Европейского Союза, Система урегулирования споров Всемирной торговой организации, Экономический Суд Содружества Независимых Государств, Суд Евразийского Экономического Союза.

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НОВЫЕ КНИГИ

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В монографии излагаются результаты исследований красного террора периода Гражданской войны 1918–1920 гг. Показано, что основной причиной многочисленных нарушений прав человека, допущенных при проведении красного террора, являются отсутствие качественно совершенного уголовного и уголовного процессуального законодательства, осуществление террора лицами, не имевшими юридического образования, классовая неприязнь.

Для специалистов в области теории и истории государства и права, историков, магистрантов и аспирантов – всех, кто интересуется проблемами истории советского государства и права, стремится установить подлинные причины и последствия красного террора, реальные события, имевшие место в период его проведения.