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THE INFLUENCE OF INTERNATIONAL CASE LAW ON THE NATIONAL LEGAL SYSTEMS

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CONCEPTUAL MILESTONES OF THE RESEARCH

Actuality and importance of the problem proposed for research. With the establishment and operation of international jurisdictions, a development of international case law took place. Those acts are the result of the settlement of disputes, in the context of which the international courts managed to identify certain „collisions" between the international legal rules or standards and the corresponding domestic legal rules or national practice. Naturally, the judicial acts of the international courts are to be executed after their issuance, which often implies the exercise of an influence on the national legal system in question. Therefore, it is opportune and interesting to research examples of inconsistencies identified by international judges, as well as to what extent the international courts managed to stimulate some changes within the domestic legal order.

In particular, the issue proposed for research is useful both for domestic doctrinaires and practitioners, since the Republic of Moldova (RM) constantly takes measures to harmonize its domestic legal order with the conclusions of the European Court of Human Rights (ECtHR), especially when it comes to the European judicial practice delivered against our State. While the RM is a contracting party to other international instruments with a significant „weight", we will notice that the judgments issued in the field of human rights litigation have a greater capacity to influence national legal systems, by virtue of the specificity of the examined cases. Indeed, many of the reforms carried out in our State are the direct consequence of the judgments by which some violations committed by the RM were found, and the most visible example is represented by the pilot case *Olaru and Others v. Moldova*, that led to the adoption Law no. 87 of 21 April 2011. This „visibility" results directly from the essence of the pilot-procedure, or in the case of its application, the connection between the pilot-judgment and the undertaken reform is obvious. By all means, the RM is subject of the execution procedure of ECtHR judgments and decisions, and therefore all aspects inherent in that process need to be researched.

However, we emphasize that the **important scientific problem**, solution to which is claimed by this paper, consists in demonstrating the capacity of international case law to influence national legal systems and highlighting the elements that allow the exercise of this influence, which contributes to the understanding of the potential of international jurisdictions to generate systemic or structural changes at the national level. Harnessing this potential leads to the harmonious development of national legal systems and their compliance with the existing international standards.

The purpose and objectives of the thesis. ***The purpose of the thesis*** is the unfolding of the influence exerted on the national legal systems by international courts through the delivered judicial acts and of the elements that allow it to be carried out. In order to achieve the above-

mentioned purpose, it is necessary to fulfil the following ***research objectives***: investigating the concept of international case law, the nature of international judicial acts, as well as the international legal rules that „govern" them, and highlighting the particularities that characterize and differentiate them, including from the perspective of the produced effect; identifying the role of the execution of international judicial acts, of the mechanisms for supervising and impulsing their execution in the exercise of influence on the domestic legal order by international jurisdictions, by studying the constituent elements of the execution process, including from a comparative perspective; assessing the „weight" of the execution measures of international judicial acts according to their type and based on the produced impact, as well as, implicitly, the delimitation of the categories of measures taken by the concerned States during the execution process; examining the issue of non-execution of international judicial acts – an impediment to the exercise of influence on the national legal system in question; elucidating the essence of the impact produced by international case law on national legal systems, by highlighting the modalities of producing the given impact, important reforms carried out on the basis of international case law and the efficacy of international judicial acts from that point of view.

Research hypothesis. The present scientific endeavor debuts from the hypothesis that international case law has the capacity to influence not only the international legal order, but also the domestic legal order. Traditionally, international judicial acts are perceived as auxiliary means of determining the rules of international law and sources that have the ability to contribute to the development of the international legal system, in the event that gaps are identified by international jurisdictions during the examination of a case and are therefore often „viewed" only within the system of international law. However, international case law possesses the capacity to exert an influence on national legal systems, this ability being attributed to it by virtue of international and also national instruments.

Presentation of the research methodology. A special emphasis was placed on logical methods, specifically analysis and synthesis, but also the investigation of causal relationships. In addition, the comparative method was used, as well as the historical one.

Description of the situation in the research field. During the writing process of the doctoral thesis various doctrinal sources, both local and foreign, were studied. We note the specialized literature in Romanian that served to strengthen the conducted study: Antohi Leonid – „*Principiul subsidiarității în dreptul internațional al drepturilor omului*"; Aurescu Bogdan – „*Sistemul jurisdicțiilor internaționale*"; Barbu Denisa – „*Răspunderea persoanei fizice în dreptul internațional penal*"; Bobaru Ana Daniela – „*Rolul Curții de Justiție a Uniunii Europene în procesul de interpretare și aplicare uniformă a dreptului Uniunii Europene*"; etc. The following papers published abroad serve as pillars of the thematic research of the doctoral thesis: Aksenova

Marina – „*The Role of International Criminal Tribunals in Shaping the Historical Accounts of Genocide*"; Anagnostou Dia – „*Introduction: Untangling the domestic implementation of the European Court of Human Rights' judgments*"; Benvenisti Eyal and Downs George W. – „*The Premises, Assumptions, and Implications of Van Gend en Loos: Viewed from the Perspectives of Democracy and Legitimacy of International Institutions*"; Bothe Michael – „*The Decision of the Italian Constitutional Court concerning the Jurisdictional Immunities of Germany*"; etc.

Scientific novelty. The topic under research has an innovative character in the RM, as the local doctrine has not yet managed to shed light on the influence of international case law on the national legal systems. Traditionally, the papers written on this subject are dedicated to the influence exerted by a single jurisdiction on the domestic legal order, most of them being focused, in particular, on the results of the activity of the Strasbourg Court reflected in the national legal system. While special attention was paid to the mechanism established on the basis of the European Convention on Human Rights (ECHR), it was managed to diversify the subject, referring also to other jurisdictional models, as well as to certain particularities thereof. Equally, we mention that the manner of approaching the respective theme represents a novelty, since the present paper is new from a structural point of view. The „configuration" of the thesis is our own product and reflects the vision that belongs to us, deriving from the conviction that precisely these elements and in such an arrangement allow a better understanding of the investigated topic. Therefore, the manner in which the theme of the thesis was treated is unique and original, which also introduces an element of novelty in the researched subject.

The theoretical importance and the applied value of the work. The doctoral thesis presents interest from both a theoretical and a practical perspective. In principle, the local doctrine has not yet „explored" the respective topic, especially in the way the present paper was approached and structured. Thus, the influence exerted by international judicial acts on the domestic legal order, as a subject, has not been harnessed to the extent of its full potential. This research would be useful and of interest to the academic environment, especially for researchers in the sphere of Public International Law and, in particular, in the field of International Litigation Law. At the application level, the mentioned topic is relevant for practitioners from States influenced by international case law, including those from the RM, given the reforms carried out by our State following the finding of a violation of the ECHR by the Strasbourg Court. Therefore, having knowledge of some substantial and procedural aspects, as well as of the impact produced by the judgments of the European jurisdiction, be those classic, pilot or quasi-pilot, on the national legal systems is absolutely necessary for the practitioners involved in the process of implementing the conclusions of the ECtHR. But not only the jurisprudential acquis of the European Court is important for scholars and practitioners in our State. For instance, an

aspect addressed within the research is represented by the origins of art. 135 of the Criminal Code of the RM, dedicated to genocide – as this crime has its beginning, from a jurisprudential point of view, in the works of the Nuremberg Tribunal.

Approval of results. The results of the research conducted during the doctoral studies were presented and approved in the form of articles published in specialized scientific journals and communications submitted at scientific conferences, listed at the end of the summary.

Summary of thesis chapters. The Doctor of Law thesis contains 4 chapters. **The first chapter** is represented by the *Analysis of the situation in the research field of the influence of international case law on the national legal systems* and it consists of 3 subchapters: *The theoretical foundation of the influence of international case law on the national legal systems. Initiation in the field of international litigation*, *Practical consolidation of the influence of international case law on the national legal systems. The value of the judicial acts of the European Court of Human Rights* and *Conclusions to Chapter 1*. **The second chapter**, in turn, refers to the *Effects of international case law*, and examines the following 4 topics: *Binding force and authority of international case law*, *Declarative versus indicative nature of international case law*, *Reparative and preventive character of international case law*, and *Conclusions to Chapter 2*. **The third chapter** deals with the defining elements of the *Execution of international judicial acts* and is divided into 4 subchapters: *Types of measures taken by States in the process of executing international judicial acts*, *Supervision of the execution of international judicial acts*, *Impulsion of the execution of international judicial acts*, and *Conclusions to Chapter 3*. **The final chapter**, *id est* the fourth, is entitled *Essence of the impact produced by international case law on the national legal systems* and covers the following topics: *Modalities of the impact produced by the case law of international judicial courts on national legal systems*, *The specifics of the impact of the European Court of Human Rights' classic judgments on the national legal systems*, *The particularities of the impact of the European Court of Human Rights' pilot-judgments on the national legal systems*, and *Conclusions to Chapter 4*.

CONTENT OF THE THESIS

This Doctor of Law thesis contains 4 chapters, intended to explain the influence exerted by international case law on national legal systems.

The first chapter represents the ***Analysis of the situation in the research field of the influence of international case law on the national legal systems*** and provides both the general perspective on the researched topic, as well as its starting point. The respective chapter indicates the theoretical and practical basis of the thesis, while also explaining some essential notions in the field of international case law, especially in the area of the one created by the Strasbourg Court.

Therefore, through the topic ***The theoretical foundation of the influence of international case law on national legal systems***. ***Initiation in the field of international litigation*** it is being highlighted that the topic of the doctorate research is based on the knowledge acquired from both the doctrinal sources and the researched practice. During the investigation, it was resorted to domestic and foreign doctrine in the field of Public International Law, in general, and International Litigation Law, International Responsibility Law, International Human Rights Law, International Criminal Law and European Union Law, in order to theoretically substantiate the influence exerted by international judicial practice on the domestic legal order.

As an introduction to the field of international litigation, we emphasize that international case law is an inherent part of the process of administering justice at the international level by the courts empowered with this prerogative. In their turn, international courts appeared and developed over time as a natural expression of the principle of peaceful settlement of international disputes, constituting some „pieces of resistance" of the the mechanism of jurisdictional means of regulation.

In this context, taking into account the complexity of the existing jurisdictional picture, we note that specialized doctrine speaks about the various typologies of international courts. Author Bogdan Aurescu[1] mentions some classification criteria: the modality of jurisdictional resolution, the subjects that can participate in the procedure, the scope of the jurisdiction and the kind of material jurisdiction. On the other end, scholar Diana Sârcu[2] approaches the following classification criteria of these jurisdictional entities: the scope of competence, the nature of the international dispute and capacity of the litigants.

International case law is, in essence, the product of the activity performed by the multitude of jurisdictional courts found on the international arena. It is made up of all the judicial

[1] Aurescu B. *Sistemul jurisdicțiilor internaționale*. București: ALL Beck, 2005, p. 7-8.
[2] Sârcu D. *Actul jurisdicțional internațional*. Chișinău: Elan Poligraf, 2013, p. 74-75.

acts issued by international courts, be those of a judicial or arbitral nature. While the local doctrine highlights at least three meanings of the notion of **international judicial act,** for our part, we consider that the **international judicial act** could be defined as the act delivered by a court, vested with jurisdiction at international level, regarding a case examined by it in contentious proceedings. Such an act can be issued during the process, aimed at solving some preliminary or incidental issues, or at the end of the process, as a final conclusion on a case.

In the doctrine, it was highlighted that „ [t]he other possible acts, such as an advisory opinion, which the ICJ or ECtHR can issue, according to their Statutes (art. 96 of the UN Charter, art. 47 of the ECHR), although is an act of jurisdiction, does not fall into the category of judicial acts, because it lacks the authority of *res judicata* and the binding and individual character, despite the fact that some advisory opinions have a serious impact in international law, such as the ICJ Advisory Opinion of 8 July 1996 regarding the legality of the threat or use of nuclear weapons"[3].

Local specialized literature distinguishes international judicial acts based on several criteria: the phases of the procedure, the type of issuing jurisdiction, the nature of the regulation, the duration of the international judicial acts and the used terminology.

With regards to the ***Practical consolidation of the influence of international case law on the national legal systems. The value of the judicial acts of the European Court of Human Rights***, we emphasize that, in practice, the strengthening of the influence exerted by international case law on the domestic legal order took place on the basis of legal rules existing at the international and national levels, of practice developed by the international judicial courts, as well as of political declarations adopted in the context of some international forums. In this regard, some practical sources can be mentioned, such as: United Nations Charter of 26 June 1945; Statute of the International Court of Justice of 26 June 1945; The Convention for the Prevention and Punishment of the Crime of Genocide of 9 December 1948; The Statute of the Council of Europe of 5 May 1949; Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950; Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity of 26 November 1968; American Convention on Human Rights of 22 November 1969; Protocol to the African Charter on Human and Peoples' Rights of 10 June 1998; Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements; Rules of the European Court of Human Rights; Law no. 151 of 30 July 2015 on the Government Agent; The Regulation on the execution procedure of judgments and decisions of the European Court of Human Rights, approved by the Decision of the Government of the Republic of Moldova no. 889 of 20 July

[3] Ibidem, p. 67-68.

2016; The Interlaken Declaration, adopted at the High-Level Conference on the Future of the European Court of Human Rights of 18-19 February 2010; The Izmir Declaration, adopted at the High-Level Conference on the Future of the European Court of Human Rights of 26-27 April 2011; The Brighton Declaration, adopted at the High-Level Conference on the Future of the European Court of Human Rights of 19-20 April 2012; The Brussels Declaration, adopted at the High-level Conference on „Implementation of the European Convention on Human Rights, our shared responsibility" of 26-27 March 2015; The Copenhagen Declaration, adopted at the High-level Conference on Reform of the European Convention on Human Rights System of 12-13 April 2018; as well as some examples of international case law.

Further, the typology of judicial acts delivered by the ECtHR is examined in more detail, given the belonging of the RM with the family of States Parties of the ECHR, and taking into account the impact significantly produced by the case law of this international judicial court on all the national legal systems of the States Parties to the treaty in question. Therefore, with respect to the variety of ECtHR case law, it is essential to draw attention to the fact that, in principle, the European jurisdiction issues two types of judicial acts: **judgments and decisions.**

The High Strasbourg Court delivers various kinds of **judgments**, depending on the problem referred to it, as well as the solution offered by it. The European Court states on the merits of a case through the judgments finding of violations or non-violations, whether it concerns an inter-state application submitted by virtue of art. 33, or an individual application lodged pursuant to art. 34 of the ECHR. Another category of judgments of the ECtHR is represented by the judgement on just satisfaction, issued on the basis of art. 41 of the Convention. Other categories of judgments delivered by the Strasbourg Court are: judgments on requests for interpretation of other judgments, issued in conformity with art. 79 of the Rules of Court; judgments resulting from the revision, the procedure being established by art. 80 of the Rules; and judgments on striking out and restoration to the list, provided by art. 43 § 3 of the Rules.

Another variety of judicial acts delivered by the European jurisdiction, in addition to judgments, are **decisions**. The latter are acts by which the Court, usually, states either on the inadmissibility, based on art. 35 of the Convention, or on striking out an application, by virtue of art. 37 of the Convention.

Additionally, on the basis of art. 46 § 3 of the Convention, there are **judicial acts of the High Strasbourg Court on the request for the interpretation of a judgment submitted by the Committee of Ministers**. Resulting from the text of art. 98 of the Rules of the Court, the European Court issues a decision on the question of interpretation referred to it by the Committee of Ministers.

In the specialized doctrine, it was emphasized that „[u]nlike the ICJ, the ECtHR does not adopt formal orders, by which it indicates the court's instructions. As a rule, such decisions take the form of official letters that the Court Registrar sends to the parties, enunciating the decision of the jurisdiction on certain issues"[4], such as: the judgment of the Chamber on the joinder of several cases; the judgment of the Chamber or the Grand Chamber regarding the restoration to the list of an application; the decision of the Chamber regarding its relinquishment in favor of the Grand Chamber.

A *sui generis* category of judicial acts delivered by the ECtHR is represented by the **pilot-judgments**. The latter are, in essence, „ordinary judgments containing general directives on how to fix structural problems in domestic law, following repetitive cases; they imply general measures in the operative part of the judgment and are therefore part of the decisional authority of the judgment - the part that binds the State Party affected by the judgment".[5] In addition to pilot-judgments, there is another category of judgments of the European Court, which could be confused with the first ones, *id est* **quasi-pilot judgments**. The latter do not fully meet the defining elements of the pilot-judgments, as the operative part of a quasi-pilot judgment lacks mentions by which are ordered general measures previously described in the content of the judicial act. In the case of quasi-pilot judgments, the Strasbourg Court suggests the appropriate measures, but does not indicate them in an imperative way in the operative part.

In the ***Conclusions to Chapter 1***, it is mentioned that the situation in the research field is represented by various doctrinal and practical sources, which allow the harnessing of the investigation of the doctoral thesis theme. Initiation in the sphere of international case law by researching the key notions is indispensable, in order to conduct such a study.

With regard to the field of the ECHR, we conclude that the whole range of judicial acts of the Strasbourg Court is of importance, since all of them, in essence, are aimed at maintaining the vitality of the Convention system. Nevertheless, the strongest impact is produced by the judgments on the merits by which a violation of the Convention is found. From the perspective of the impact, the pilot-judgments are of special interest, since in their operative part the Court expressly orders general measures, including legislative ones.

The **second chapter** refers to the ***Effects of international case law***, and its purpose is to explain the essential characteristics of international case law which allow it to exert the respective influence. This part of the thesis focuses on the substantive aspects of international judicial acts.

[4] Ibidem, p. 94.
[5] Zysset A. *The ECHR and Human Rights Theory. Reconciling the Moral and the Political Conceptions*. Routledge, 2017, p. 116.

Therefore, in the context of examining the subject of the ***Binding force and the authority of international case law***, we note that „[j]udgment compliance is an essential component of any thorough assessment of the working of international courts and tribunals, and one that is often connected to the performance of these forums"[6]. An important element that lies at the foundation of ensuring the compliance of concerned States with the international judicial acts delivered against them is represented by the compulsoriness to execute.

As it was highlighted in the specialized literature, „[t]he obligation to execute international judicial acts is based on a customary rule, by virtue of which the States Parties to an inter-state dispute are required to comply in good faith with the delivered jurisdictional judgment"[7]. Nevertheless, over time, the respective obligation was not only transposed in the concluded international treaties, but also extended to the international judicial acts resulting from the examination of cases that were not necessarily between States. The binding force of international case law is enshrined, for instance, in art. 94 § 1 of the United Nations Charter of 1945, art. 59 of the Statute of the International Court of Justice of 1945, art. 105 § 1 of the Rome Statute of 1998, art. 68 § 1 of the American Convention on Human Rights of 1969, art. 30 of the Protocol to the African Charter of Human and Peoples' Rights from 1998, art. 46 § 1 of the European Convention on Human Rights and art. 260 § 1 of the Treaty on the Functioning of the European Union (TFEU).

With regards to the mentioned provision of the ECHR, William A. Schabas[8] highlighted that the obligation enshrined in par. 1 of art. 46 is a specific formulation of the general principle *pacta sunt servanda*, codified in art. 26 of the Vienna Convention on the Law of Treaties and the in the third recital of its Preamble: „[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith"[9]. However, in practice there are situations where the binding character of the judgments issued by the Strasbourg Court is not taken into account. Thus, on 14 July 2015, the Constitutional Court of the Russian Federation established that the judgments of the European Court of Human Rights that are in contradiction with the Constitution cannot be executed in Russia. Later, in the same year, it was proposed to amend the Federal Constitutional Law on the Constitutional Court of 21 July 1994, in order to give the Russian Constitutional Court the prerogative to declare decisions of international courts as non-enforceable, and in the context of the 106th plenary session of 11-12 March 2016 the Venice

[6] Giorgetti C. *What Happens after a Judgment is Given? Judgment Compliance and the Performance of International Courts and Tribunals*. In: The Performance of International Courts and Tribunals, Cambridge: Cambridge University Press, 2018, p. 324.
[7] Sârcu D. *Actul jurisdicțional internațional*..., p. 217.
[8] Schabas W.A. *The European Convention on Human Rights: A Commentary*. Oxford: Oxford University Press, 2015, p. 866.
[9] Vienna Convention on the Law of Treaties of 23 May 1969. Available: https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf (visited on 2 June 2021).

Commission gave its opinion regarding the amendments in question, stressing that **the execution of the Court's judgments is an unequivocal legal obligation.**

During the research of the binding force of ECtHR case law, it is also appropriate to approach the concept of authority of the same European judicial practice. Thus, arises the question regarding the effect produced by the judgments of the European Court, from the point of view of opposability, if it is ***inter partes* or *erga omnes***. As we know, this matter can be elucidated by relating the mentioned concepts to the notions of „**authority of *res judicata*" and** „**authority of *res interpretata*"**, these representing two modalities of the **authority of the judgments of the European Court**. The authority of *res judicata* and the *inter partes* effect are enjoyed, in principle, by the operative part of the European Court's judgment, while the authority of *res interpretata* and the *erga omnes* effect – the interpretative part of the judgment's text.

With regards to the ***Declarative versus indicative nature of international case law***, we emphasize that in the European system for the protection of human rights, the respondent States benefit from a certain margin of appreciation during the implementation of the judgments issued against them by the ECtHR, in contrast to the American system and the African one, as the Interamerican Court of Human Rights (ICtHR) and the African Court of Human and Peoples' Rights (ACtHPR) possess wider prerogatives which, implicitly, lead to the narrowing of the margin of appreciation of the States in question. However, the three systems are not without similarities in such context.

In the system created by the ECHR, the respondent State has the freedom to choose the measures to be taken in order to comply with the findings of the violation by the Strasbourg Court. In the case law of the European Court, this freedom is explained through the lens of the **declarative nature** of the judgments delivered by it. An exception to the declarative nature of the judgments of the Strasbourg Court derives from art. 41 of the Convention, as in the event of meeting the conditions established in the content of this article, the applicant is entitled to obtain just satisfaction. Another „derogation" is represented by the judgments of the European Court issued as a result of the pilot-judgment procedure, „as in the case of pilot-judgment, the State no longer has the latitude it normally enjoys in the case of a classic Court judgment"[10]. Another „deviation" from the declarative nature of the judgments issued by the European Court, that is quite curious, is represented by the rather rare practice of indicating in the operative part of this

[10] Șiman C. *Impactul hotărârilor-pilot ale Curții Europene a Drepturilor Omului asupra sistemelor de drept național*. În: coord. ed. Grama M. Rezumatele tezelor de master. Anii de studii: 2016-2018, Chișinău: CEP USM, 2018, p. 159.

judicial act other individual measures than the granting of just satisfaction, as it was done in the case *Ilașcu and Others v. Moldova and Russia* [11].

In contrast to the traditional practice of the ECtHR, the ICtHR, as well as the ACtHPR usually order measures to be taken by the States that „lost the case". *Inter alia*, we note that from the case law of the International Court of Justice (ICJ) an indicative character of its judgments can be deduced.

With reference to the subject ***Reparative and preventive character of international case law***, we highlight that in addition to the characteristics examined above, international case law has a reparative and also preventive nature, directed both towards the remedy of violated rights, as well as the prevention of new violations of international legal rules.

A particular interest presents the research of the reparative nature of international case law in the sphere of fundamental human rights and freedoms, in relation to the institution of international responsibility of States, as the violation of a treaty in the field of human rights leads to the responsibility of the State due to non-compliance with its international obligation arising from the treaty – to respect the right in question. This idea is also based on the concepts addressed by the International Law Commission in Part I of the 2001 Draft Articles on the Responsibility of States for Internationally Wrongful Acts, which clearly shows the connection between the violation of an international obligation and State responsibility. From art. 1 of the Draft, it follows that it „covers all international obligations of the State and not only those owed to other States"[12] and therefore „State responsibility extends, for example, to human rights violations and other breaches of international law where the primary beneficiary of the obligation breached is not a State"[13]. In this sense, the following articles are relevant: art. 41 of the European Convention on Human Rights of 1950; art. 63 § 1 of the American Convention on Human Rights of 1969; and art. 27 § 1 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the Court of 1998.

Approaching the scope of the ECHR, we note that the reparative nature of a judgment of the Strasbourg Court is not expressed only in the payment of a sum as just satisfaction, as the Court often determines that the mere finding of a violation of the Convention constitutes, in itself a sufficient just satisfaction. The reparative character of the European Court's judgment is also manifested by other the measures taken by the respondent States during the execution of the judgment delivered by this international jurisdiction against them, such as the re-examination or

[11] Case of *Ilașcu and Others v. Moldova and Russia*, no. 48787/99, judgment of 8 July 2004. Available: https://hudoc.echr.coe.int/eng?i=001-61886 (visited on 11 January 2023).
[12] Draft Articles on Responsibility of States for Internationally Wrongful Acts (with Commentaries), adopted by the International Law Commission at its 53rd session, in 2001, p. 87.
[13] Ibidem.

reopening the national judicial proceedings. In the case of pilot-judgments, the reparative character acquires specific nuances in contrast to the classic judgments of this court.

As for the preventive character of international case law, it consists in the measures taken by the respondent States following the delivery of a judgment against them, by the international jurisdiction, and are aimed at preventing similar violations. These can be expressly indicated by the international judicial court, as the ICtHR or the ACtHPR, or they can be „intuited" through deduction by the respondent State based on the conclusions presented by the international jurisdiction in the content of the judicial act issued on the case, as it is done when a classic judgment is issued by the ECtHR. Within the meaning of the ECHR system, the reparative character of the judgments delivered by the European Court is manifested by taking individual measures, and the preventive one, in turn, by the taking general measures.

In the ***Conclusions to Chapter 2***, it is underscored that the binding force, together with the authority of *res judicata* and *res interpretata*, the declarative or indicative nature, but also the reparative or preventive character of the judicial acts of the international judicial courts, essentially represent the effects of international case law on the national legal systems. Each of the above-mentioned elements brings its own contribution to the efficacy of international judicial acts, including in the domestic legal order. Although the binding force of international judicial judgments is enshrined in a sufficiently explicit manner in the texts of international treaties, there are certain challenges in ensuring its compliance, as some States disregard the respective obligation, but also the authority of international case law. Nevertheless, these effects are not abolished in this way. In context, there is a lack of uniform practice at the level of international jurisdictions regarding the application or non-application of the principle of subsidiarity, assigning to the respondent States a differentiated margin of appreciation on the possibility or impossibility of choosing measures to implement the international judicial acts delivered against them, by giving them a declarative or indicative character. The reparative and preventive character are, as a rule, inherent to the same international judicial act and coexist as its effects, deriving from it. Specifically referring to the reparative character of international case law, we emphasize that it is inextricably linked to the institution of international State responsibility, namely by engaging such responsibility on the basis of the judgment of an international jurisdiction, the reparative nature of the respective judicial act is harnessed. While the reparative aspect of international case law is conceptually „built" in a rather different way, its purpose remains the same - to remedy the found breach.

The third chapter deals with the defining elements of the ***Execution of international judicial acts***. The respective subjects, researched both individually and jointly, contribute to the

understanding of all the key elements that form the process of execution of international judicial acts. This chapter primarily focuses on procedural matters.

At the beginning of the subject ***Types of measures taken by States in the process of executing international judicial acts***, it is mentioned that a fundamental element of the influence exerted by international case law is represented by the measures carried out by States in the process of its execution. Namely, by implementing these measures, the efficacy of international judicial acts is ensured.

The measures for the execution of judicial acts are either designed by the State in question or are indicated directly by the court that examined the case, depending on the specifics of the respective jurisdictional system. For example, the IACtHR does not hesitate to indicate, expressly, the remedial actions to be carried out by the State against which its judgment is issued. However, the inter-American jurisdiction, like other international jurisdictions, does not enshrine the classification of measures for the execution of its judgments, taking as a criterion the subject impacted by the given case law. For instance, satisfaction measures, in the sense of IACtHR case law, would be intended for both the individual as well as the collectivity. The categorization of measures for the execution of international judicial acts depending on the produced impact, on the individual or the collectivity, proves to be successful in the protection system established by virtue of the ECHR.

Following the delivery of judgments finding a violation by the Strasbourg Court, the concerned States take the appropriate individual and general measures to implement the Court's conclusions. Therefore, the State against which a judgment is issued is obliged to take **individual measures**, the purpose of which is to ensure that the violation of the ECHR, found by the European jurisdiction, has ceased and that the injured party is restored, to the extent that it is possible, in its situation prior to the violation of this treaty by the national authorities. More important, from the point of view of the produced impact, are the **general measures** which the respondent State is obliged to carry out in order to execute the judgment directed against it. This category of measures focuses on preventing future violations of the Convention that would be caused by the problem that initially led to its violation. In the specialized literature it was highlighted that „[t]hey represent «large scale» measures that extend beyond the specific individual case"[14]. Further, it was elucidated that „[t]he obligation to institute general measures is a way of exerting an influence on legal, judicial or national policy reforms in the spheres under the competence of the Convention"[15].

[14] Sârcu D., Șiman C. *Măsurile întreprinse de state în procesul executării hotărârilor Curții Europene a Drepturilor Omului*. În: Revista Institutului Național al Justiției, 2019, nr. 1(48), p. 11.
[15] Ibidem.

Supervision of the execution of international judicial acts is a complex process, which differs from one jurisdiction to another, possessing its own particularities. For instance, in the case of some jurisdictions the international judicial courts themselves, which are issuing the judicial acts subject to implementation control, are the bodies that monitor their execution. While in other jurisdictions, this task is delegated to other bodies within the respective international organization.

In the sphere of international criminal jurisdiction, it is the International Criminal Court (ICC) that supervises the execution of its prison sentence. Previously, in the case of the sentences delivered by the International Military Tribunal at Nuremberg, „[e]xecution of the punishments was entrusted to the Allied Control Council, which also had the right to modify or reduce the punishments imposed, without aggravating them"[16]. Accordingly, the researcher W.A. Schabas[17] underscored that International Military Tribunals took no part in the enforcement of the sentences that it imposed, and when the Security Council established the ad hoc tribunals, it delegated enforcement of sentences to national justice systems, subject to some supervision by the international tribunals.

The role of the ICtHR and the ACtHPR in supervising the implementation of their own judgments by the States against which they are issued results from the judicial acts delivered by these two international courts. Scholars Diego Rodríguez-Pinzón and Claudia Martin[18] pointed out that the Inter-American Court has no specific authority under the American Convention or the Statute and Rules of the Court to supervise compliance or set a monitoring procedure. Nevertheless, since the first judgments on reparations in 1989, the Inter-American Court has established a practice of requesting information from States and adopting resolutions assessing States' compliance. Researcher Jan Schneider[19] underlined that the American Convention on Human Rights, unlike the European Convention on Human Rights, does not provide for a dedicated monitoring system, and art. 65 of the inter-American treaty is the only hard-law rule that makes an allusion to non-compliance with judgments. With regards to the African human rights protection system, the doctrine draws our attention to the fact that the „[e]xecution of judgments is monitored by the Executive Council of the AU on behalf of the AU Assembly"[20].

[16] Sârcu D. *et al*. *Jurisdicția internațională penală*. Chișinău: CEP USM, 2008, p. 81.
[17] Schabas W.A. *The International Criminal Court: A Commentary on the Rome Statute (2nd Edition)*. Oxford: Oxford University Press, 2016, p. 1374.
[18] Rodríguez-Pinzón D., Martin C. *The Inter-American human rights system: selected examples of its supervisory work*. In: edited by Joseph S. and McBeth A. Research Handbook on International Human Rights Law, 2010, p. 378.
[19] Schneider J. *The execution of judgments of the European and Inter-American Courts of Human Rights*. In: Cadernos de Direito 14(26), January - June 2014, p. 22.
[20] Ssenyonjo M. *Responding to Human Rights Violations in Africa. Assessing the Role of the African Commission and Court on Human and Peoples' Rights (1987–2018)*. In: International Human Rights Law Review, Volume 7: Issue 1, 19 June 2018, p. 32.

Within the European Union, based on art. 260 of the TFEU[21], the European Commission, an institution with an executive role, is responsible for monitoring the execution, by the member States, of the judgments of the Luxembourg Court.

In the system of the European Convention on Human Rights, the execution of the case law of the High Strasbourg Court is subject to a well-structured control, entrusted to the Committee of Ministers of the Council of Europe[22]. The Committee of Ministers, the Council of Europe's main policy-making and executive body, consists of the foreign ministers of each member State, or their Deputies – the permanent diplomatic representation in Strasbourg[23]. Thus, the role of supervising the execution of judgments delivered by the High Strasbourg Court falls not on a legal body, but on a political one. In the specialized literature[24] was expressed the opinion that while subsidiarity is paramount to the procedure before the ECtHR, execution of judgments is much more formalized and has been put on stronger foots by the authors of the ECHR. The situation is completely opposite in the Inter-American space, where the IACtHR was endowed with the competence to develop a very detailed reparations practice, but no procedure was foreseen to effectively supervise the implementation of its judgments.

As for the ***Impulsion of the execution of international judicial acts,*** it was noted that according to art. 94 § 2 of the UN Charter, „[i]f 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"[25]. In accordance with art. 260 § 2 of the TFEU "[i]f the Commission considers that the Member State concerned has not taken the necessary measures to comply with the judgment of the Court, it may bring the case before the Court after giving that State the opportunity to submit its observations. It shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances"[26]. Furthermore, "[if] the Court finds that the Member State concerned has not complied with its judgment it may impose a lump sum or penalty payment on it"[27].

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[21] Treaty on the Functioning of the European Union of 25 March 1957. Available: https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:12012E/TXT&from=RO (visited on 21 February 2023).
[22] Șiman C. *Supravegherea executării jurisprudenței Curții Europene a Drepturilor Omului*. În: Revista Institutului Național al Justiției, 2021, nr. 2(57), p. 33.
[23] Greer S. *et al*. *Human Rights in the Council of Europe and the European Union. Achievements, Trends and Challenges*. Cambridge: Cambridge University Press, 2018, p. 61.
[24] Schneider J. *The execution of judgments of the European and Inter-American...*, p. 23.
[25] United Nations Charter of 26 June 1945. Available: https://www.un.org/en/about-us/un-charter/full-text (visited on 28 November 2021).
[26] Treaty on the Functioning of the European Union of 25 March 1957. Available: https://eur-lex.europa.eu/legal-content/RO/TXT/PDF/?uri=CELEX:12012E/TXT&from=RO (visited on 10 March 2023).
[27] Ibidem.

Although sometimes the binding character of the judgments of the Strasbourg Court is „neglected", there are some instruments intended to impulse the process of execution of the judgments finding the violation of the ECHR that remained unvalorized. Among these instruments is the practice of adopting **interim resolutions** by the Committee of Ministers of the Council of Europe (CoE). Another instrument impulsing the execution of European Court judgments was introduced by Protocol no. 14 to the ECHR and is represented by the right of the Committee of Ministers to refer the Strasbourg Court if the respondent State refuses to execute the judgment directed against it. The entire mechanism, both for referral and for legal finding, is enshrined in art. **46 §§ 4 and 5 of the Convention**, being at the same time detailed by rule 11 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, as well as by the series of norms included between rules 99 and 104 of the Rules of the Court. The actions referred to in **art. 8 of the Statute of the Council of Europe**, *id est* the suspension of representation rights and the request from the Committee of Ministers for the withdrawal of a State from the organization, as well as the cessation of membership of the CoE, at the decision of the Committee of Ministers, could be considered as sanctions applicable in case of non-execution a judgment of the High Strasbourg Court.

In ***Conclusions to Chapter 3***, it is noted that the process of executing international judicial acts is consisted of several key elements, such as: the measures taken by the States during this process, the mechanism for supervising the execution of such acts, but also the instruments impulsing the respective process. Taking execution measures represents an obligation of the State against which the international judicial judgment is issued, while the supervision and impulsion of execution of international judicial acts does not fall within its competence, but it is task of an organ, within the corresponding international organization, or even of the issuing judicial court. From this results the common effort made during the process of implementing international judicial acts in order to ensure their effectiveness. We appreciate that the supervision mechanism established by the ECHR is of significant complexity and is regulated accordingly, while the risks related to assigning the monitoring role to a political body remain present. Considering the legal specifics of the control exercised by the Committee of Ministers over the execution of judgments and decisions of the European jurisdiction, we estimate that delegating diplomats with legal studies to the meetings in the DH format by the States Parties to the Convention is judicious. However, regardless of the field of academic or professional training, at the foundation of the decisions made during the respective meetings must be found the desire to protect the rights and freedoms enshrined in the Convention.

As instruments to impulse the execution of ECtHR judgments and decisions can be considered: the possibility of issuing interim resolutions, the mechanism offered by art. 46 §§ 4

and 5 of the ECHR, as well as the options established by art. 8 of the CoE Statute. The given prerogatives do not always enjoy increased efficiency, but the compulsoriness to implement the Court's decisions is not canceled by such circumstances. Therefore, in order to support the principle *pacta sunt servanda* and art. 46 § 1 of the Convention, all necessary efforts must be put so that the binding nature of the judgments is respected, and the conclusions of the European Court are properly implemented in the national legal system in question. In order to ensure the effectiveness of international case law, the same approach is to be adopted with respect to all international judicial acts, regardless of the issuing jurisdiction. In this sense, in the sphere of activity of the ICJ, we consider it necessary to exclude the right of veto of the permanent members of the Security Council, at least in the application of art. 94 § 2 of the United Nations (UN) Charter. Additionally, we believe that even art. 46 §§ 4 and 5 of the ECHR could be improved based on the model provided by Article 260 § 2 of the TFEU.

The **final chapter**, *id est* fourth, is entitled ***Essence of the impact produced by international case law on national legal systems***. Namely, this chapter of the doctoral thesis is directed to the study of some results recorded by the international judicial acts in the domestic legal order, including ways of producing the actual impact. A special emphasis is placed on the effect produced by ECtHR case law at the national level.

The topic ***Modalities of the impact produced by the case law of international judicial courts on national legal systems*** debuts with the opinion of the scholar Marcelo Torelly[28], according to which traditional approaches to the assessment of the impact of international law on domestic law tend to focus on the question of State compliance. In this „all-or-nothing" approach, States that comply with rulings of international courts are understood to converge their domestic norms with international law while States that do not are viewed as resisting international law. We consider that in accordance with the stated opinion, the international judicial act, in principle, is the way of aligning domestic legal order with the international or even the community one. But there are also situations in which the respective act generates changes first in the conventional framework, which later in turn produces changes in the domestic normative framework. However, it should be noted that it is through the „will" of the international courts that the impact is initiated, through the identification of a discrepancy or lacuna in the national legal system, with the purpose of removing it. But its very production depends on the „will" of the respondent State, against which the act is delivered.

Therefore, various international jurisdictions have managed to produce an impact on national legal systems, having at their disposal, as a primary instrument, the issued judicial act.

[28] Torelly M. *From Compliance to Engagement: Assessing the Impact of the Inter-American Court of Human Rights on Constitutional Law in Latin America.* In: edited by Engstrom P. The Inter-American Human Rights System. Impact Beyond Compliance, Studies of the Americas. Cham, Switzerland: Palgrave Macmillan, 2019, p. 115.

However, the modalities of producing such impact have also varied. In this context, we consider that the judgment delivered by the Nuremberg International Military Tribunal on 30 September and 1 October 1946 **indirectly** affected national legal systems, essentially starting a „chain reaction" that led to the criminalization of genocide at the national level. The preliminary rulings of the Luxembourg Court had a **direct** impact on the domestic legal order, since these acts did not require any legislative transposition to produce the corresponding effect. And in the case examined by the Hague Court, in order to produce an impact on the existing situation inside the country, it was resorted to the adjustment of the internal legislation, which is, in principle, a **partially direct** modality. The latter approach, traditionally, is also undertaken by the Strasbourg Court.

With reference to ***The specifics of the impact of the European Court of Human Rights' classic judgments on the national legal systems***, the idea expressed in the doctrine is mentioned, according to which the ECHR „has served as a catalyst for legal change that has furthered the protection of human rights at national level and, in doing so, has assisted in the process of harmonizing human rights law in Europe"[29]. Legislative amendments are often made following a judgment of the European Court on the merits of a case to which the State, which later resorts to the modification of its domestic legislation, was a party.

In the case of *Loizidou v. Turkey*[30], the Strasbourg Court appreciated the Convention as a „constitutional instrument of European public order". Therefore, the judgments of the European Court, being delivered by virtue of this precious instrument, contribute in a significant way to the creation and consolidation of a veritable constitutional case law in the European space, and this, in turn, influences all the legal systems of the States Parties.

Therefore, some States resorted to amending their domestic law or practice in order to bring it in line with ECtHR case law, following judgments on certain cases in which the respective States were not involved as parties. According to the scholar Titus Corlățean „[t]he doctrine explains this by the fact that although the States as «non-parties» are not legally «bound» by the delivered sentencing judgments, they are still obliged to guarantee the respect of fundamental rights and freedoms under article 1 of the European Convention"[31]. There have been situations where certain States have amended their national legislation so that it is consistent with the provisions of the ECHR and the case law of the High Strasbourg Court, before becoming parties to this international treaty. Or, more unusual, the Convention, together

[29] Harris D.J. and Others. *Harris, O'Boyle & Warbrick: Law of the European Convention on Human Rights*. Fourth Edition. Oxford: Oxford University Press, 2018, p. 36.
[30] Case of *Loizidou v. Turkey*, no. 15318/89, judgment of 23 March 1995. Available: https://hudoc.echr.coe.int/eng?i=001-57920 (visited on 23 October 2022).
[31] Corlățean T. *Protecția europeană și internațională a drepturilor omului*. București: Universul Juridic, 2012, p. 153.

with the ECtHR's jurisprudential *acquis*, have influenced the national law of some non-European States. The content of this international treaty served as a source of inspiration for numerous legislative acts of some States that were previously colonies of the States Parties to the Convention, and the Court's case law was cited in cases examined by the national courts of some non-European States.

Therefore, „the Convention exerts constant pressure to maintain human rights standards. A judgment of the European Court in a case generated by an individual applicant can have an impact in the 47 national jurisdictions that are members of the Council of Europe"[32]. In the RM, likewise, reforms were carried out following the finding, by the High Strasbourg Court, of ECHR violations committed by our State. The improvements made targeted various spheres, depending on the violations identified by the European Court.

In the field of ECtHR's case law, there were situations in which the national legal system had managed to be subjected to beneficial changes before the judgment of the European Court was delivered, which was going to reflect a problem „generative" of Convention violations and, consequently, of complaints before the European jurisdiction. In such circumstances it is quite difficult to say which factor, in fact, served as an impetus in their undertaking.

Regarding ***The particularities of the impact of the European Court of Human Rights' pilot-judgments on the national legal systems***, it is mentioned that „[t]he creation of the pilot judgment procedure in the system of the European Convention on Human Rights reflects, *inter alia*, the awareness of the need to resolve the problem of repetitive cases, which served as a factor in aggravating the phenomenon of the «backlog» of the Strasbourg Court"[33]. In 2010, the Romanian author Corneliu Bîrsan stated that „the judgment delivered by the European jurisdiction relatively recently in the *Broniowski* case (...) marks an important moment in the development of its case law regarding the correlated application of the provisions of art. 41 and art. 46 of the Convention, through the fact that the European court understands, this time, to firmly indicate to the State in question general measures, likely to lead to the resolution, at the national level, of disputes having the same object". It is notable that in 2011 the pilot-judgment procedure was codified by the ECtHR, by introducing a new article in its Rules, but up until the present time the ECHR does not contain any explicit rule regarding the pilot-judgment procedure, which would give it a veridical, certain and undoubted legitimacy.

The pilot-judgment procedure was initiated in a multitude of cases, which had various problems at the center of their concerns, such as inadequate conditions of detention, excessive length of the procedure and lack of an effective remedy, prolonged non-enforcement of court

[32] Ibidem, p. 154.
[33] Șiman C. *Conturarea procedurii hotărârii-pilot în sistemul Convenției Europene a Drepturilor Omului de-a lungul timpului*. În: Studia Universitatis Moldaviae, 2020, nr.8(138), Seria Științe sociale, p. 288.

decisions and lack of an effective remedy, the failure to regularise residence status, but also deficiencies leading to the violation of the right to property protection. These represented, at their time, some areas that required reforms, and the Court identified them, while also determining the appropriate solutions for the respective.

The RM is one of the States that have the experience of participating in a pilot-judgment procedure. On 28 July 2009, the ECtHR issued the pilot-judgment in the case of *Olaru and others v. Moldova*[34], and later the Parliament, according to the conclusions of the European Court, adopted on 21 April 2011 Law no. 87[35], by which a mechanism was established to compensate the damage caused by the excessive length of judicial and enforcement procedures. Later, on 15 September 2015, the Strasbourg Court delivered its quasi-pilot judgment in the *Shishanov v. Republic of Moldova*[36] case, suggesting in the text of the judgment how to solve the problems caused by the precarious conditions of detention in prisons. Consequently, Law no. 163 of 20 July 2017[37], and Law no. 272 of 29 November 2018[38], were adopted, which introduced a new preventive and compensatory remedy for people affected by inappropriate detention conditions.

In principle, the beneficiaries of the pilot-judgment procedure are the European Court, the applicant directly concerned in the case, those involved in repetitive cases and possible future applicants, as well as the Committee of Ministers, but also the State against which the pilot-judgment was delivered.

Such techniques, specific to the pilot-judgment procedure, as the adjourning of the examination of repetitive cases, the resumption of their examination or the extension of the time-limit for the implementation of the ordered measures are tools regulating the process of adopting the general measures indicated in the operative part of the pilot-judgment, favoring their implementation. While they influence the process of taking the appropriate general measures, the true impact on national legal systems is produced through the respondent State's direct implementation of the execution measures established in the operative part of the pilot-judgment. Indeed, „the pilot-judgment represents a remarkable judicial act of the High Strasbourg Court, of a *sui generis* nature characteristic only for it, which, although it is only at the beginning of its

[34] Case of *Olaru and Others v. Moldova*, no. 476/07, 22539/05, 17911/08 and 13136/07, judgment of 28 July 2009. Available: http://hudoc.echr.coe.int/eng?i=001-93687 (visited on 29 August 2021).
[35] Law of the Republic of Moldova on the Reparation by the State of the Damage Caused by the Infringement of the Right to Trial within a Reasonable Time or the Right to Judgment Enforcement within a Reasonable Time. No. 87 of 21 April 2011. In: Official Journal of the Republic of Moldova, 2011, no. 107-109.
[36] Case of *Shishanov v. The Republic of Moldova*, no. 11353/06, judgment of 15 September 2015. Available: http://hudoc.echr.coe.int/eng?i=001-157341 (visited on 24 September 2023).
[37] Law of the Republic of Moldova Modifying and Completing Some Legislative Acts. No. 163 of 20 July 2017. In: Official Journal of the Republic of Moldova, 2017, no. 364-370.
[38] Law of the Republic of Moldova Modifying Some Legislative Acts. No. 272 of 29 November 2018. In: Official Journal of the Republic of Moldova, 2018, no. 462-466.

path, managed to lead to some admirable results, by stimulating veritable progress in the protection, at the national level, of rights and freedoms enshrined in the Convention"[39].

In the ***Conclusions to Chapter 4*** it is concluded that different international judicial courts have the capacity to produce an impact on national legal systems. Each of them somehow managed to influence the national legal „climate" and, based on the models described above, produced the given effect in various ways. Regardless of the chosen modality, the very efficacy of the international judicial act resides in the produced impact. While the Nuremberg Tribunal has already managed to produce an impact on the national legal system of the RM, it is notable that with the accession to the EU it will be necessary to implement the preliminary rulings of the Luxembourg Court which enshrine the principle of direct application of EU law and that of the supremacy of EU law. Additionally, we conclude that it is judicious to establish a transparent reporting system on the execution status of the judgments issued by the ICJ.

In the case of the ECtHR, the influence on the domestic legal order often takes place by transposing the respective jurisdiction's conclusions from its judgments finding the violation into national legislation. In fact, the „echo" caused by such judgments is the most effective, being followed by the taking of measures implementing the findings of the European Court not only by the State against which the judgment was issued, but also by other countries that know their problems within their own legal system, whether or not they are signatories of the ECHR. The efficacy of this technique can be measured both in the case of the classic judgments of the European Court, and in the case of applying the pilot-judgment procedure. In the event of applying the pilot-judgment procedure, the causal link between the conclusions of this Court and the actions taken by the State is considerably more visible. In order to increase the effectiveness of the classic judgments of the European Court, it would be necessary to establish some mechanisms for a prompter examination of cases. Sometimes the remedial measures are carried out before the delivery of such a judgment and, in this kind of situation, it is quite difficult to attribute the merit to the respective judicial act.

The pilot judgment procedure was initiated in a lot of cases which concerned various problems of a systemic or structural nature. A good amount of States have registered some significant progress after the issuance of pilot-judgments, as different legislative reforms followed in many of the concerned countries. Therefore, the beneficial effect of the pilot-judgment procedure on the national legal systems is undoubtable, without neglecting the advantages of delivering quasi-pilot judgments, which „predict" the issuance of pilot-judgments, in the event of disregarding the first mentioned ones.

[39] Șiman C. *Impactul hotărârilor-pilot ale Curții Europene a Drepturilor Omului asupra sistemelor de drept național*..., p. 165.

GENERAL CONCLUSIONS AND RECOMMENDATIONS

In the doctoral thesis, we aimed to demonstrate the ability of international case law to influence national legal systems and to highlight the elements that allow the exercise of this influence. Accordingly, the conducted investigation allows us **to conclude** the following:

1. Specialized doctrine and everyday practice show us that the field of international jurisdiction is as vast as it is complex. This is due to the variety of international courts with different competences, which determine not only their scope of activity, but also the specifics of the delivered judicial acts. While international courts and the issued acts arise interest, the influence of international case law on national legal systems, as a reforming element, is less discussed in the academic and professional environment. But this appears to be a rather important aspect, thus being tested the effectiveness of international judicial acts, including at the national level.

2. The efficiency of international case law is „built" on the basis of the effects produced by it, such as the binding force and authority, the declarative or indicative nature, but also the reparative or preventive nature of international judicial decisions. Each of these contributes to the efficacy of international judicial acts, even in the national legal system.

3. Despite the enshrining of the binding force of international judicial judgments in the texts of international treaties that „govern" the activity of international jurisdictions, some States disregard the bindingness, but also the authority of international case law. Such attitudes do not abolish the respective effects, and the instruments intended to impulse the execution of international judicial judgments must be used in a judicious manner.

4. We emphasize the specificity of international jurisdictions, compared to each other, manifested, for instance, by the non-existence of a uniform practice on the application or non-application of the principle of subsidiarity by international judicial courts, giving the concerned States a differentiated margin of appreciation in their ability or inability to choose the execution measures, by assigning a declarative or indicative nature to them.

5. There are quite common features among international judicial acts, such as the reparative effect and preventive one, which often derive from the same judgment. The reparative nature of the respective acts represents a „point of intersection" between International Litigation Law and International Responsibility Law, since an international judicial judgment can serve as the basis for holding the State to international responsibility.

6. However, knowledge of the effects of international case law is not quite enough. It is also essential to delve into the procedural aspects, which also make it possible to exert an influence by international judicial acts. Thus, the very process of execution of international

judicial acts proved to be equally important in the context of the conducted study, as well as its key elements, viewed individually, *id est*: execution measures, the mechanism for supervising the execution of international judicial acts, and the tools impulsing the process in question. Namely, the given elements, forming the execution process, ensure its functionality, but also the efficacy of international case law. The diversity of the measures taken by the States is indubitable, and the supervision activity is specific in the case of each jurisdiction, as is the nature of the instruments aimed at impulsing the implementation of international judicial acts.

7. The complete and complex regulation of the execution process of ECtHR judgments and decisions is notable, while abstracting away from the possible risks related to conferring the monitoring role to a political body, namely the Committee of Ministers. But if the decision-making and executive body of CoE will always adopt a position in favor of the protection of fundamental rights, then there will be no grounds for concern about potential dangers. Therefore, it is up to each member State of the CoE to make all necessary efforts for the prevalence of respect for human rights and fundamental freedoms when the Committee of Ministers meets. Only in this manner the influence of the Strasbourg Court's judgments on the national legal systems will be enhanced.

8. Various international judicial courts have managed to produce an impact on the national legal systems, this being carried out in different ways, be it indirectly, directly or partially directly. We note that some international courts, such as the Nuremberg Tribunal or the Strasbourg Court, have already managed to produce an impact on the domestic legal order of the RM through their case law, and the Luxembourg Court will have this possibility once our state joins the EU.

9. Addressing, in particular, the case law of the High Strasbourg Court, we emphasize that all judicial acts delivered by the Court are valuable. A special role is played by the judgments issued by the ECtHR finding the violation, since they impulse progress in the matter of human rights and fundamental freedoms, where this is necessary. Following the delivery of such judicial acts, the concerned States, by virtue of the binding force of the judgments of the European Court, take the appropriate individual and general measures to implement the conclusions of this international court. Individual measures are not unimportant, but general measures have a stronger effect, causing a real „echo" within the national legal system. Amending national legislation, administrative or judicial practice, disseminating European Court's case law in the domestic system or improving detention conditions in penitentiary institutions are some relevant examples that demonstrate the significant „weight" of general measures, as these actions are not limited to the individual situation of a person, but influence the „fate" of an entire community.

10. Such measures, especially legislative ones, can be taken both on the basis of classic judgments finding the violation and in the event of delivering quasi-pilot or pilot-judgments by the Strasbourg Court. While sometimes the causal link between a traditional judgment of the European Court and the reform carried out by the concerned State is not beyond any doubt, in the event of applying the pilot-procedure the relationship between cause and effect is quite obvious, the indication of the European jurisdiction from the operative part of the pilot-judgment being subject of execution. The great merit of the ECtHR lies in boosting progress in the domestic legal order of the signatory States of the ECHR in the given field. Moreover, the case law of the European Court established some essential standards in the sphere of fundamental rights that other States also take into account, not only those concerned by the European jurisdiction. This is an important part of the purpose of any international court, establishing certain standards through its judicial practice, so as to generate positive developments in the existing legal order, including at the national level.

Last but not least, based on the conducted investigation, we appreciat as appropriate to submit the following **recommendations**:

1. In the event of assigning the power to supervise the execution of international judicial acts to a political body, it would be appropriate to prioritize the delegation of representatives initiated in the field of law to participate in the respective exercise.

2. In order to improve the mechanism for impulsing the implementation of the judicial acts delivered by the ICJ, we estimate as necessary to exclude the right of veto of the permanent members of the Security Council, at least when applying art. 94 § 2 of the UN Charter.

3. The improvement of the mechanism established on the basis of Article 46 §§ 4 and 5 of the ECHR can take place by adopting the model provided by Article 260 § 2 of the TFEU.

4. We consider it judicious to establish a transparent reporting system regarding the degree of execution of the judgments issued by the ICJ.

5. In order to increase the effectiveness of the classic judgments of the ECtHR, we suggest the establishment of certain mechanisms for a prompter examination of the cases referred to it, bearing the existence of the scenario of taking measures to remedy the violation before the judgment is issued.

Towards the end, we conclude that international case law has the capacity to influence national legal systems, and the progress made is visible, being possible by virtue of the elements described above. It remains to be seen in which direction we will be further guided by the international judicial courts through the judicial acts delivered by them.

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LIST OF THE AUTHOR'S PUBLICATIONS ON THE TOPIC OF THE THESIS

Articles in scientific journals:

1. Sârcu D., Șiman C. *Măsurile întreprinse de state în procesul executării hotărârilor Curții Europene a Drepturilor Omului*. În: Revista Institutului Național al Justiției, 2019, nr. 1(48), pp. 9-12.
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Articles in conference proceedings and other scientific events:

1. Șiman C. *The Effectiveness of the European Court of Human Rights' Pilot Judgment Procedure in the Republic of Moldova*. In: The Collection of Scientific Reports of the The Legal Scientific-Practical International Conference *Legal Activity. Reforming Legislation and Public Institutions. Achievements, Problems and Prospects*, held in Ukraine on 30 May 2019, Kiev: ArtEk, 2019, pp. 55-56.
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ADNOTARE

Șiman Corina, „Influența jurisprudenței internaționale asupra sistemelor de drept național". Teză de doctor în drept. Școala Doctorală Științe Juridice și Economice a Universității de Stat din Moldova. Chișinău, 2024

Structura tezei: Introducere, patru capitole, concluzii generale și recomandări, bibliografie. Rezultatele cercetării sunt reflectate în 14 publicații științifice, dintre care 8 articole și comunicări științifice au fost publicate pe parcursul studiilor doctorale.

Cuvinte-cheie: Instanțe internaționale, jurisprudență internațională, acte jurisdicționale internaționale, efectele jurisprudenței internaționale, procesul de executare, impactul jurisprudenței.

Scopul tezei: Scopul tezei îl constituie dezvăluirea influenței exercitate asupra sistemelor de drept național de către instanțele internaționale prin intermediul actelor jurisdicționale pronunțate, precum și a elementelor care permit realizarea acesteia.

Obiectivele cercetării: Prezenta teză are în calitate de obiective studiul conceptului și efectelor jurisprudenței internaționale, procesului de executare a actelor jurisdicționale internaționale, esenței impactului produs de jurisprudența internațională asupra sistemelor de drept național.

Noutatea şi originalitatea științifică a tezei: Doctrina autohtonă încă nu a reușit să pună în valoare subiectul influenței jurisprudenței internaționale asupra sistemelor de drept național și, în această ordine de idei, se atestă o lacună în literatura de specialitate. Adițional, accentuăm că maniera de abordare a acestei teme, din optică structurală, reprezintă o noutate în sine.

Rezultatul obținut care contribuie la soluționarea unei probleme științifice importante: Demonstrarea capacității jurisprudenței internaționale de a influența sistemele de drept național și evidențierea elementelor care permit exercitarea acestei influențe, ceea ce contribuie la înțelegerea potențialului jurisdicțiilor internaționale de a genera modificări sistemice sau structurale la nivel național. Valorificarea acestui potențial duce la dezvoltarea armonioasă a sistemelor de drept național și conformarea acestora cu standardele internaționale existente.

Semnificația teoretică a tezei: Subiectul influenței exercitate de jurisprudența internațională asupra ordinii juridice interne, mai ales după cum a fost abordată și structurată în prezentul demers științific, în principiu, nu a fost valorificat pe măsură întregului său potențial. O asemenea lucrare ar fi utilă și interesantă în mediul academic, cu precădere pentru cercetătorii din sfera Dreptului Internațional Public și, în mod special, Dreptului Contenciosului Internațional.

Valoarea aplicativă a tezei: Tema tezei este relevantă pentru practicienii din statele influențate de jurisprudența internațională, inclusiv pentru cei din Republica Moldova, date fiind reformele întreprinse în urma hotărârilor Curții Europene a Drepturilor Omului.

Implementarea rezultatelor științifice: Rezultatele științifice ale cercetării urmează a fi valorificate în mediul academic și utilizate de specialiștii din sfera respectivă.

ANNOTATION

Șiman Corina, „The Influence of the International Case Law on the National Legal Systems". PhD in Law Thesis. Doctoral School of Legal and Economic Sciences of Moldova State University. Chișinău, 2024

The structure of the thesis: Introduction, four chapters, general conclusions and recommendations, bibliography. The results of the research are reflected in 14 scientific publications, of which 8 scientific articles and papers were published during doctoral studies.

Keywords: International courts, international case law, international judicial acts, the effects of the international case law, execution process, the impact of case law.

The purpose of the thesis: The purpose of the thesis is the unfolding of the influence exerted on the national legal systems by the international courts through the delivered judicial acts and of the elements that allow it to be carried out.

The objectives of the research: This thesis aims the study of the concept and effects of international case law, the execution process of international judicial acts, the essence of the impact produced by the international case law on national legal systems.

The novelty and the scientific originality of the thesis: The local doctrine has not yet managed to valorize the subject of the influence of international case law on the national legal systems and, in this regard, there is a gap in the specialized literature. In addition, we emphasize that the manner of approaching this topic, from a structural perspective, is a novelty itself.

The result obtained that contribute to the solving of an important scientific problem: Demonstrating the capacity of international case law to influence national legal systems and highlighting the elements that allow the exercise of this influence, which contributes to the understanding of the potential of international jurisdictions to generate systemic or structural changes at the national level. Harnessing this potential leads to the harmonious development of national legal systems and their compliance with the existing international standards.

The theoretical significance of the thesis: The subject of the influence exerted by international case law on the domestic legal order, especially as it was approached and structured in the present scientific endeavour, in principle, was not valorized to its full potential. Such a work would be useful and interesting in the academic environment, especially for researchers in the field of Public International Law and, in particular, of International Litigation Law.

The applicative value of the thesis: The topic of the thesis is relevant for practitioners from states influenced by international case law, including those from the Republic of Moldova, given the reforms undertaken following the judgments of the European Court of Human Rights.

The implementation of scientific results: The scientific results of the research are to be harnessed in the academic environment and used by specialists in the respective field.

АННОТАЦИЯ

Шиман Корина, „Влияние международной юриспруденции на национальные правовые системы". Диссертация на соискание научной степени доктора права. Докторальная Школа Юридических и Экономических Наук Государственного Университета Молдовы. Кишинэу, 2024

Структура диссертации: введение, четыре главы, общие выводы и рекомендации, библиография. Результаты исследований отражены в 14 научных публикациях, из них 8 научных статей и докладов опубликованы во время докторантуры.

Ключевые слова: Международные суды, международная юриспруденция, международные судебные акты, эффекты международной юриспруденции, исполнительный процесс, воздействие юриспруденции.

Цель диссертации: Целью диссертации является раскрытие влияния, оказываемого на национальные правовые системы международными судами посредством вынесенных судебных актов, а также элементов которые позволяют этого достичь.

Задачи исследования: Данная диссертация направлена на изучение понятия и эффектов международной юриспруденции, процесса исполнения международных судебных актов, сущности воздействия международной юриспруденции на национальные правовые системы.

Научная новизна и оригинальность диссертации: В отечественной доктрине пока не удалось выделить тему влияния международной юриспруденции на национальные правовые системы и, в этом порядке идей, есть пробел в специализированной литературе. Кроме того, мы подчеркиваем что сам подход к этой теме, со структурной точки зрения, является новизной.

Полученный результат, способствующий решению важной научной проблемы: Демонстрация способности международной юриспруденции влиять на национальные правовые системы и выделение элементов, которые позволяют осуществлять это влияние, что способствует пониманию потенциала международных юрисдикций для создания системных или структурных изменений на национальном уровне. Использование этого потенциала ведет к гармоничному развитию национальных правовых систем и их соответствию существующим международным стандартам.

Теоретическое значение диссертации: Тема влияния международной юриспруденции на отечественный правопорядок, особенно в том виде в каком она была поставлена и структурирована в настоящей научной работе, в принципе не была раскрыта в полной мере. Такая работа была бы полезна и интересна в академической среде, особенно для исследователей в области Международного Публичного Права и, в частности, Международного Права Судопроизводства.

Практическая значимость диссертации: Тема диссертации актуальна для практиков из государств, находящихся под влиянием международной юриспруденции, в том числе из Республики Молдова, учитывая реформы предпринятые по решениям Европейского Суда по Правам Человека.

Имплементация научных результатов: Научные результаты исследования подлежат использованию в академической среде и использованию специалистами в соответствующей области.

ȘIMAN CORINA

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