

*Constitutional Court of the Russian Federation—international human rights—enforcement of judgments of the European Court of Human Rights—conflict between international obligations and domestic constitutional law—subsidiarity—restrictions on voting rights*

ANCHUGOV & GLADKOV v. RUSSIA, Judgment No. 12-П/2016. At <http://doc.ksrf.ru/decision/KSRFDecision230222.pdf>.

Constitutional Court of the Russian Federation, April 19, 2016.

On April 19, 2016, in *The Case Concerning the Resolution of the Question of the Possibility to Execute in Accordance with the Constitution of the Russian Federation the Judgment of the European Court of Human Rights of 4 July 2013 in the Case of Anchugov and Gladkov v. Russia in Connection with the Request of the Ministry of Justice of the Russian Federation (Anchugov & Gladkov (Russ.))*, the Constitutional Court of the Russian Federation (Constitutional Court) held that decisions of the European Court of Human Rights (ECtHR) are binding on Russian courts, in accordance with Article 15(4) of the 1993 Constitution of the Russian Federation.<sup>1</sup> At the same time, the Constitutional Court stressed the necessity of ensuring a reasonable balance between the obligation to implement ECtHR judgments and respect for the fundamental principles of the Russian Federation's constitutional system. The Constitutional Court found that because the ECtHR judgment in question implicitly conflicted with provisions of the Russian Constitution, Russian courts are not obliged to comply with the judgment regarding issues that remain in conflict; however, other means are available to the Russian legislature to give effect to the judgment. While the decision marks an important development in Russia's relationship with the European system of human rights, it is not inconsistent with the approach taken by a substantial number of European domestic courts in holding that treaty obligations to enforce decisions of international courts cannot justify violating domestic constitutional norms.

The Russian Federation became a party to the 1950 European Convention on Human Rights (ECHR or Convention) in 1998.<sup>2</sup> In so doing, Russia accepted the provisions of Article 46(1) of the Convention, under which “[t]he High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.”<sup>3</sup> The process of adapting Russian legislation and law enforcement practices to ECtHR interpretations of the Convention has continued steadily over the following decades, but not without some controversy.

<sup>1</sup> Ruling of the Russian Federation Constitutional Court of Apr. 19, 2016, No. 12-П/2016, *available* (in Russian) at <http://doc.ksrf.ru/decision/KSRFDecision230222.pdf>, *available* (in English) at [http://www.ksrf.ru/en/Decision/Judgments/Documents/2016\\_April\\_19\\_12-P.pdf](http://www.ksrf.ru/en/Decision/Judgments/Documents/2016_April_19_12-P.pdf). References to specific statements in the decision are to the latter. Article 15(4) of the 1993 Russian Constitution states that “[u]niversally recognized principles and norms of international law as well as international agreements of the Russian Federation should be an integral part of its legal system. If an international agreement of the Russian Federation establishes rules, which differ from those stipulated by law, then the rules of the international agreement shall be applied.” KONSTITUTSIYA ROSSIJSKOI FEDERATSII [KONST. RF] [CONSTITUTION OF THE RUSSIAN FEDERATION] (1993), Art. 15(4) [hereinafter RUSSIAN CONSTITUTION], *available* (in English) at [https://www.constituteproject.org/constitution/Russia\\_2008.pdf](https://www.constituteproject.org/constitution/Russia_2008.pdf).

<sup>2</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, ETS No. 5, 213 UNTS 222, *available* at [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf). On May 5, 1998, the Russian Federation also ratified Additional Protocol No. 1 to the Convention, as well as others not relevant to this discussion.

<sup>3</sup> *Id.*, Art. 46(1).

In 2003 the Plenum of the Supreme Court of the Russian Federation issued a resolution establishing that

[i]mplementation of the judgments [of the ECtHR] . . . imposes an obligation to adopt private measures aimed at eliminating violations of human rights provided for by the Convention . . . , as well as measures of a general nature in order to prevent the recurrence of such violations . . . . Courts within their competence must act in such a way as to ensure the fulfillment of the obligations [of the Russian Federation] arising from the participation . . . in the Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>4</sup>

Ten years later, the Plenum adopted another resolution, according to which “[t]he legal views of the ECtHR contained in the final judgments of the Court taken in respect of the Russian Federation are binding on the courts . . . and must be taken into account when applying the legislation of the Russian Federation.”<sup>5</sup>

As a result of the government’s efforts to promote the effective protection of human rights under the Convention, the number of complaints brought to the ECtHR against the Russian Federation has decreased from 8,913 complaints in 2014, to 6,003 complaints in 2015, and to 5,591 complaints in 2016.<sup>6</sup> However, these efforts have not fully eliminated the contradictions in the ECtHR’s evaluation of how various provisions of Russian law comport with the requirements of the Convention. As a result, the European Court has continued to issue judgments holding that certain provisions of Russian law (and Russian statutes) contravene Russia’s obligations under the Convention.

Most notably, in *Anchugov & Gladkov v. Russia* (*Anchugov & Gladkov* (Eur.)),<sup>7</sup> the ECtHR considered a challenge under Article 3 of Additional Protocol No. 1 (AP-1), which guarantees the right to free elections.<sup>8</sup> The applicants, who were convicted prisoners incarcerated in Russia, challenged the lawfulness of the Federation’s refusal to allow them to participate in the election of governmental authorities, based on the provisions of Article 32(3) of the Russian Constitution, which states that “[c]itizens . . . who are kept in places of imprisonment under a court sentence, shall not have the right to elect and be elected.”<sup>9</sup>

<sup>4</sup> Resolution of the Plenum of the Supreme Court of the Russian Federation No. 5, On the Application by the Courts of General Jurisdiction of Universally Recognized Principles and Norms of International Law and International Treaties of the Russian Federation, Oct. 10, 2003, para. 11, available (in Russian) at <https://rg.ru/2003/12/02/pravo-doc.html>.

<sup>5</sup> Resolution of the Plenum of the Supreme Court of the Russian Federation No. 21, On the Application by the Courts of General Jurisdiction of the Convention for the Protection of Human Rights and Fundamental Freedoms of November 4, 1950 and the Protocols Thereto, June 27, 2013, paras. 2–3, available (in Russian) at <https://rg.ru/2013/07/05/konvencia-dok.html>.

<sup>6</sup> See European Court of Human Rights, Analysis of Statistics 2016, at 111, table 2, at [http://www.echr.coe.int/Documents/Stats\\_analysis\\_2016\\_ENG.pdf](http://www.echr.coe.int/Documents/Stats_analysis_2016_ENG.pdf).

<sup>7</sup> *Anchugov & Gladkov v. Russian Federation*, App. Nos. 11157/04 & 15162/05, First Section, Final Judgment (Sept. 12, 2013), at <http://hudoc.echr.coe.int/eng?i=001-122260> [hereinafter *Anchugov & Gladkov v. Russia*].

<sup>8</sup> Article 3 of Protocol 1 to the European Convention of Human Rights, ETS 9 (entered into force May 18, 1954), provides that “[t]he High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”

<sup>9</sup> RUSSIAN CONSTITUTION, *supra* note 1, Art. 32(3).

Noting that the rights guaranteed by AP-1 Article 3 are fundamental to establishing and maintaining an effective and meaningful democracy, the ECtHR also observed that they are not absolute and that “the margin [of appreciation] in this area is wide.”<sup>10</sup> At the same time, it said, that margin is not “all-embracing.”<sup>11</sup> Relying heavily on its prior decision in the *Hirst* case, in which it stated that a “general, automatic and indiscriminate restriction on a vitally important Convention right must be seen as falling outside any acceptable margin of appreciation,”<sup>12</sup> the ECtHR concluded that because Article 32(3) of the Russian Constitution “imposes a blanket restriction on all convicted prisoners serving their prison sentence,”<sup>13</sup> the Russian government had “overstepped the margin of appreciation afforded to them in this field and have failed to secure the applicants’ right to vote guaranteed by Article 3 of Protocol No. 1.”<sup>14</sup>

As for the execution of its judgment, the ECtHR observed that Russia could choose “the means to be used in its domestic legal order in order to discharge its obligation under Article 46 of the Convention.”<sup>15</sup> It noted the possibility of using the political processes available in the state or interpretation of provisions of the Constitution by competent state authorities in light of ECHR provisions to eliminate contradictions between them. Thus, the ECtHR did not directly require an amendment of the Russian Constitution.

In December 2015, the Russian Parliament amended the Law on the Constitutional Court of the Russian Federation permitting the Russian Constitutional Court to render a decision, at the request of the appropriate federal authority, on the possibility of executing the ECtHR’s decisions in cases where there is uncertainty about whether the ECtHR’s interpretation of an international treaty conforms with provisions of the Russian Constitution.<sup>16</sup>

On the basis of that amendment, the Ministry of Justice sought the views of the Constitutional Court regarding the “possibility” of executing the ECtHR’s judgment in *Anchugov & Gladkov* (Eur.) in accordance with the Russian Constitution.

In *Anchugov & Gladkov* (Russ.), the Constitutional Court observed that, as a duly ratified treaty, the Convention forms “an integral part” of the Russian legal system and the state is “obliged to execute” the judgment of the European Court (para. 1.2). At the same time, the Constitution of the Federation remains the supreme law, so that “the interaction of the European conventional and the Russian constitutional legal orders is impossible in the conditions of subordination,” meaning that the Russian Federation cannot give effect to treaty obligations that violate its Constitution (*id.*). The Constitutional Court’s task, therefore, was to find a “reasonable balance” in order to “answer the letter and spirit” of the ECtHR’s judgment while not “com[ing] into conflict with the fundamental principles of the constitutional order of the Russian Federation” (*id.*).

<sup>10</sup> See *Anchugov & Gladkov v. Russia*, *supra* note 7, paras. 94–95.

<sup>11</sup> *Id.*, para. 103.

<sup>12</sup> *Hirst v. United Kingdom* (No. 2), 2005-IX Eur. Ct. H.R. 187, para. 82, at <http://hudoc.echr.coe.int> [hereinafter *Hirst v. U.K.*].

<sup>13</sup> See *Anchugov & Gladkov v. Russia*, *supra* note 7, para. 105.

<sup>14</sup> *Id.*, para. 110.

<sup>15</sup> *Id.*, para. 111.

<sup>16</sup> Federal Constitutional Law, On the Constitutional Court of the Russian Federation, Dec. 14, 2015, available (in Russian) at <http://www.ksrf.ru/ru/Info/LegalBases/FCL/Pages/default.aspx>.

Under the Russian Constitution, the Constitutional Court stated, citizens have the right to participate in governance directly and through their representatives, including the right to elect and be elected to both federal and local bodies and to participate in referenda. However, certain restrictions are necessary to guard against abuse. Article 32(2) of the Constitution provides that citizens deprived of their liberty by virtue of criminal conviction do not have the right to elect or be elected. Such restrictions, if “objective and reasonable,” are not incompatible with the International Covenant on Civil and Political Rights<sup>17</sup> or with AP-1 Article 3 (para. 3).

That was the understanding when the Russian Federation signed and ratified the ECHR and Additional Protocol No. 1: “[B]oth Russia and the Council of Europe recognized that Article 3 of Protocol No. 1 . . . and Article 32(2) of the Constitution . . . were in full accord with each other” (para. 4.2). While neither document has since been amended, the Constitutional Court observed, the ECtHR’s position on the right of a state to restrict voting rights of convicted (imprisoned) citizens has “evolved” over time and as a result, the Constitutional Court’s decision in *Anchugov & Gladkov* (Russ.) “implicitly contemplat[es] alteration” of the Russian Constitution (para. 4.3). However, the Court found that Russia “has the right to insist on the interpretation of Article 3” pursuant to the understanding at the time the treaty was brought into force “as an integral part of Russia’s legal system” (para. 4.2).

More specifically, the Constitutional Court observed that over time, “by means of ‘evolutive’ interpretation . . . the specific content of criteria of ‘non-automatism,’ proportionality and differentiation in legal positions of the European Court . . . has been subject to substantial changes” (para. 4.3). Moreover, within the legal systems of states parties to the Convention, “there is no . . . consensus with respect to the restriction of electoral rights of convicted (imprisoned) persons” (*id.*). In a considerable number of cases, such persons “are either completely deprived of electoral rights, or in one way or another are restricted in their active electoral right (right to vote) . . .” (*id.*). Under the Convention, a European consensus exists if there is a general consensus among the states parties to the ECHR, or at least relative uniformity in a particular field of law enforcement; however, as the foregoing indicates, there is actually a lack of *opinio juris* to support the ECtHR’s “evolutive” interpretation of the criteria for legitimacy of restrictions on voting rights under Article 3 (*id.*).

Thus, implementation of the ECtHR judgment must be carried out within the limits of the obligations assumed by the Russian Federation when ratifying the ECHR. However, the Constitutional Court stated, any disagreement with the ECtHR’s interpretation of Article 3 of Protocol 1 to the ECHR should not be taken as a form of protest, but as intended to contribute to the practice of the ECtHR, which reflects the consensus among states (para. 4.4).

On the basis of an extensive review of relevant Russian law and practice, the Constitutional Court concluded that the ECtHR had failed to understand the relevant domestic practices accurately, particularly regarding the “excessive mass character of the restriction in Russia of electoral rights of persons [sentenced to] deprivation of liberty” (para. 5.3). It noted, for

<sup>17</sup> Citing Office of the High Commissioner on Human Rights, CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote), The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service, UN Doc. CCPR/C/21/Rev.1/Add.7, para. 14 (adopted July 12, 1996), available at <http://www.osce.org/odhr/elections/19154?download=true>.

example, that Russian criminal law “practically fully excludes the possibility of application of deprivation of liberty to persons having committed crimes of small gravity in the absence of aggravating circumstances, and therefore, restriction of their electoral rights is not admitted” (para. 5.2). A proper understanding of actual practice, it said, “refute[s] the arguments about absence of effective differentiation, proportionality and ‘non-automatism’ in the Russian legal and judicial system . . .” (para. 5.3). The restrictions on voting rights contained in the Russian legislation represent proportionate and differentiated measures.

Finally, the Constitutional Court recognized that interpreting Article 32(3) of the Russian Constitution in light of the ECtHR’s judgment might be considered as a means of implementing that judgment because it would permit avoidance of “similar collisions” with the requirements of the Convention as interpreted by the ECtHR in the case of *Anchugov & Gladkov* (Eur.) (para. 5.5). At the same time, it said, the Russian legislature is able, where appropriate, to provide for alternative forms of punishment or to transfer the forms of punishment involving deprivation of liberty into independent kinds of punishment, that permit individuals to exercise their active voting rights (para. 5.5). These approaches, it held, would make recognition and execution of the ECtHR’s judgment “possible and realizable in Russia’s legislation and judicial practice, so far as in accordance with Article 32(3) of the Constitution of the Russian Federation and the provisions of the Criminal Code . . .” (para. 2, holding).

\* \* \* \*

The Constitutional Court’s decision addressed fundamental questions about the relationship between national and international law and the respective roles of the domestic and international judiciaries in that relationship. Recognizing the primacy of the Constitution of the Russian Federation over all other acts of the Russian legal system, the Court clearly emphasized the possibility of simply reinterpreting the Russian Constitution in order to give effect to the judgment of the European Court. It also noted that under the Constitution and the European Convention, judgments of the ECtHR in cases where the Russian Federation is a party are binding on the Russian Federation, and it pointed to several other ways (apart from direct implementation) by which the state could, with a measure of discretion, take measures aimed at implementation of the judgment. In this regard, the decision sought to achieve a “reasonable balance” between what it viewed as conflicting obligations under domestic and international law.

Underlying this effort is a tacit realization that the process of creating binding legal obligations at the international level is radically different from the parallel process within individual states. In light of the principle of sovereign equality of states, the existence of an international obligation can be established only when there is explicit or implicit consent of the state. No international legislature exists; thus, state consent remains the fundamental principle in formulating international law. International judicial bodies do not have authority to create substantive rules of law, which prevents reliance on their decisional law as generally binding precedent. While in some judicial systems (e.g., the Anglo-Saxon legal family) courts can be considered “creators of law” in the sense that their decisions establish rules of broad applicability, the decisions of international courts are legally binding only on the parties of the particular dispute.

Moreover, in domestic legal systems, regardless of their “legal family” (civil law, common law, etc.), a whole structure of interrelated courts exists in which appeals are typically

permitted, in the event of an erroneous interpretation of the relevant rule of law, to a higher court that can provide a remedy for errors and abuses. No such system of courts exists in the international sphere. In fact, the complete dependence on decisions by a specific judicial body (as in the case of the European Court of Human Rights) has on occasion been identified as the reason for the fragmentation of international law.

This situation, together with the fact that international courts lack authority to create rules of law, is what requires a very delicate approach by international courts in interpreting the relevant international legal obligations of respective states. Those international courts must work to determine the true (or underlying) meaning of the particular rule of law in question, rather than create a new one.

These considerations are especially applicable in relation to the European Court of Human Rights, which under Article 32(1) of the European Convention, is competent to decide all questions “concerning the interpretation and application of the Convention and the Protocols thereto which are referred to it . . .” under the relevant provisions of the ECHR and the Additional Protocols. In practice, the decisions of the ECtHR have frequently departed significantly from its own earlier judgments, even when considering very similar complaints. When the ECtHR adopts different interpretations of ECHR provisions and indirectly creates new obligations, it can only be justified on the basis of the explicit or implicit consent (*opinio juris*) of the member states. The necessity for unity among the member states is fixed in the Preamble to the ECHR, and in the decisions of the ECtHR. In any other case, the states have the right to oppose the newly adopted interpretation obligation and to decline to abide by it.

This view was the basis for the Constitutional Court’s position in *Anchugov & Gladkov* (Russ.) to reject the ECtHR’s interpretation of the relevant Convention provisions because that interpretation exceeded the obligations as understood and confirmed by the Russian Federation when it became party to the European Convention. In accordance with Article 57(1) of the Convention regarding the right to make reservations “in respect of any particular provision of the Convention to the extent that any law then in force in its territory is not in conformity with the provision,” the Russian Federation pointed out a number of provisions of criminal law which did not involve restrictions on voting rights, thus demonstrating that it considered provisions limiting the voting rights of incarcerated prisoners to be consistent with its obligations under the Convention and its Additional Protocols. Further, the absence of uniformity among the states parties to the Convention regarding the interpretation and implementation of Article 3 of AP-1 underscores the absence of a common understanding or approach, thus broadening the applicable “margin of appreciation.”<sup>18</sup>

By way of example, one can refer (as the ECtHR did in *Anchugov & Gladkov* (Eur.)) to the 2005 judgment in the case of *Hirst v. United Kingdom (No.2)*,<sup>19</sup> in which the ECtHR Grand Chamber concluded that a particular provision of English law violated the United Kingdom’s obligations under the ECHR. Several years later, a Chamber of the ECtHR had occasion to

<sup>18</sup> Along with Great Britain and Russia, provisions depriving all prisoners of active voting rights by court sentence are contained in the legislation of such Council of Europe member states as Armenia, Bulgaria, Estonia, Georgia, and Hungary.

<sup>19</sup> *Hirst v. U.K.*, *supra* note 12.

address the U.K.'s non-compliance with that judgment and issued a so-called "pilot" judgment.<sup>20</sup> Similar judgments were subsequently rendered in a number of other cases.<sup>21</sup>

Against this background, the ECtHR's conclusion that Russia's legislation exceeds a reasonable "margin of appreciation" and contradicts a shared understanding of the relevant provisions of the Convention seems unsupportable. It underscores the dangers and risks of an overly active ("law-making") interpretation of the Convention.

Nevertheless, the Constitutional Court's decision reflected the fact that the Russian Federation, as a democratic state, remains interested in creating common legal values and ensuring a stable international order—that is why the Court emphasized its determination to find a way to cooperate in this context with the ECtHR. The Constitutional Court was unquestionably correct in pointing out that the provisions of Russian legislation which provide that sentences should be tailored in each case as appropriate to the gravity of the crime and the personality of the perpetrator, comply with the requirements of the ECtHR in the differentiated and proportionate restrictions on voting rights. The ECtHR's conclusions in this case were made without a proper, comprehensive analysis of the relevant legislation. As noted by the Constitutional Court, those provisions were consistent with the requirements referred by the ECtHR.

The approach taken by the Constitutional Court in this case—in particular by evaluating the ECtHR's judgment carefully in light of national practice and by searching for ways in which the Russian Federation might appropriately comply with the judgment—reflects a respectful consideration of the views and practice of the ECtHR and a commitment to ensure the effective protection of human rights under the terms of the Convention. The Constitutional Court's presentation and formulation of arguments demonstrates a thoughtful respect for the ECtHR as an international judicial body, as well as the commitment of the Russian Federation to comply with its obligations under the ECHR and to improve respect for human rights. At the same time, it acknowledges that every state has a legitimate right to resist efforts to impose rules threatening the consensual nature of international law, contravening its national interests, and (most importantly) contradicting its own constitutional provisions. In other words, the Constitutional Court's activities are not intended to interfere with the ECtHR, but to promote more effective practice.

At the same time, one must acknowledge that there are some risks in the possibility that a state may abuse this approach to refuse to carry out "inconvenient" judgments of the ECtHR. In the event of non-compliance with (or violations of) a state's obligations under Article 46 to abide by the final judgment of the ECtHR in any case where it is a party, recourse can of course be made to the Council's Committee of Ministers (which shall supervise its execution).

*Anchugov & Gladkov* (Russ.) illustrates some of the most important problems in the field of cooperation between national and international justice systems, which must be resolved in

<sup>20</sup> See *Greens & M.T. v. United Kingdom*, 2010-VI (extracts) 57 (Nov. 23), at <http://hudoc.echr.coe.int/eng?i=001-101853>. The "pilot judgment" procedure was adopted in 2011 via Rule of Court 61. See European Court of Human Rights Press Unit, *Pilot Judgments Factsheet* (June 2017), at [http://www.echr.coe.int/Documents/FS\\_Pilot\\_judgments\\_ENG.pdf](http://www.echr.coe.int/Documents/FS_Pilot_judgments_ENG.pdf).

<sup>21</sup> *Firth v. United Kingdom*, App. Nos. 47784/09 et al., Fourth Section, Judgment (Aug. 12, 2014), at <http://hudoc.echr.coe.int/eng?i=001-146101>; *McHugh v. United Kingdom*, App. Nos. 51987/08 et al., Fourth Section, Judgment (Feb. 10, 2015), at <http://hudoc.echr.coe.int/eng?i=001-151005>; *Millbank v. United Kingdom*, App. Nos. 44473/14 et al., First Section, Judgment (June 30, 2016), at <http://hudoc.echr.coe.int/eng?i=001-163919>.

accordance with the basic principles of international law and in the spirit of cooperation. As the findings of the Constitutional Court decision demonstrate, the positions of the ECHR and the Russian Federation have much more in common than it seems at first sight.

The decision has attracted special interest in the light of recent statements by a number of Russian politicians about the necessity of deleting Article 15(4) of the Russian Constitution because it enshrines priority to international treaties over federal legislation and thus is viewed as encroaching on national sovereignty. To be sure, such statements have very little to do with reality, since acceptance by the state of treaty obligations is not a limitation on sovereignty when it is done on the basis of free will and takes into account the relevant national interests. However, since there are growing concerns about unduly broad interpretations of international agreements, influencing the very nature of international law which is based on consensus, it is entirely reasonable to take a delicate approach to the assessment of decisions of international judicial and quasi-judicial bodies.

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*European Union law—relationship to national constitutions—role of national constitutional courts—sovereignty—national constitutional identity—fundamental rights—ultra vires review*

DECISION 22/2016. (XII. 5.) AB ON THE INTERPRETATION OF ARTICLE E)(2) OF THE FUNDAMENTAL LAW. At <http://hunconcourt.hu>. Constitutional Court of Hungary, December 5, 2016.

In a case of first impression, the Constitutional Court of Hungary (CCH or Court) ruled on November 30, 2016 that, in exceptional cases, it is competent to consider whether Hungary's obligations to the European Union (EU) violate fundamental individual rights (including human dignity) or Hungarian sovereignty as protected by the Hungarian Constitution.<sup>1</sup> The decision places Hungary squarely within the growing group of EU member states whose constitutional courts have decided that, despite the decisions of the European Court of Justice regarding the primacy of EU law, EU member states are not compelled to violate their domestic constitutional obligations in carrying out their shared EU commitments.

The proceeding arose in the context of a disagreement between Hungary and the EU about the mandatory relocation of asylum seekers to member states pursuant to the EU Council's Decision 2015/1601 of September 22, 2015. That decision established provisional measures in the area of international protection for the benefit of Italy and Greece and, in the specific case, resulted in the transfer of 1,294 migrants to Hungary. The Hungarian Commissioner of Human Rights (i.e., the national ombudsman) considered that, because this "quota" decision mandated the transfer of a specific group of individuals without their consent and without

<sup>1</sup> Decision 22/2016 (XII.5), AB on the Interpretation of Article E) (2) of the Fundamental Law (Const. Ct. Hung. Nov. 30, 2016), available (in English) at [http://hunconcourt.hu/letoltesek/en\\_22\\_2016.pdf](http://hunconcourt.hu/letoltesek/en_22_2016.pdf) [hereinafter Decision].