



Implementation of human rights judgments and decisions against the Czech Republic

Joint JUSTIN / HRLIP Workshop

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Outline

- Human Rights Law Implementation Project
- Research questions
- Methodological challenges
- Country and case selection
- Outputs

Human Rights Law Implementation Project

- Universities of Bristol, Essex, Middlesex, Pretoria + Open Society Justice Initiative
- September 2015-18
- Qualitative approach - semi-structured interviews in nine states and with 'system' actors (regional courts / commissions / monitoring bodies + UN treaty bodies)
- EUROPE: Belgium, the Czech Republic, Georgia
- AFRICA: Burkina Faso, Cameroon and Zambia
- AMERICAS: Canada, Colombia and Guatemala

Premises of the HRLIP's approach

- States are not unitary actors but are made up of disparate actors with different and levels of will and capacity, which change over time
- Human rights 'systems' are a complex web of interaction and interdependence between institutional actors, domestic and supranational
- Each actor has different functions, expertise, competence and claims to legitimacy—and none can secure the objectives of the system alone, but only through their interrelationships (coordination, bargaining, oversight)
- Supranational bodies have facilitative but not determinative role in ensuring compliance—'tipping point' actors
- Broadly congruent with constructivist approach to IR

Research questions

→ **ACTORS & SYSTEMS**: questions pertaining to **actors** and their capacity, functions, interactions, attitudes and motivations – thereby capturing how **systems** (domestic and supranational) work as a whole, both formally and informally.

→ **CASE-CENTRED**: questions which explore factors associated with judgments/decisions that influence different actors' **responsiveness** to them, and thus ultimately (the prospects for) implementation, with a focus on remedial orders (specificity and prescriptiveness).

‘Process-tracing’ methodology

- Around 6-7 cases / groups of cases per state
- Detailed timeline of:
 - developments related to the **judgment** itself
 - developments related to **implementation**
 - **external** developments
- periods of prolonged delay or acceleration
- anticipatory responses
- non-linear nature of implementation process
- role and motivations of discrete actors
- interplay of ‘internal’ and ‘external’ factors

Methodological challenges

- **Determining causality**, especially where complex, protracted reform required: rulings may strengthen advocates of reform, accelerating reform or influencing its direction, without being sole or primary cause
- **Reliance on interpretation of monitoring bodies as to whether compliance has been achieved**: e.g. assessment made on basis of inadequate or opaque information; potential for interpretation to be contested by other actors
- **Measuring implementation and compliance**: need for disaggregated approach to reparation measures – captures different types of partial implementation
- **Speed of implementation** not necessarily a reliable indicator of effectiveness at case level
- **Reliability of interviewees**: need for multiple sources

Country selection

- Some states eliminated due to (i) paucity of case law (ECtHR & UN → need to include cases involving complex reparations addressing systemic or widespread violations) and (ii) feasibility of conducting research
- Mapping exercise based on several global indices: stronger → medium → weaker
- Elimination of 'also possibles' - neither weakest nor strongest; at least some 'pro-compliance' structures
- Regional considerations: e.g. one former Soviet state, geographical spread, federal state
- Comparison within and between regions

Case selection

- Eliminator criteria: sufficient **complexity of reparation measures** and **time passed** since judgment / decision
- Ensuring **diversity** of cases in respect of:
 - number and characteristics of victim / beneficiary group
 - existence of cluster of cases
 - remedies: specificity / prescriptiveness, novelty
 - state and non-state perpetrators
- Final selection based on factors including **comparability** within and between regions re. themes

Examples of outputs of HRLIP

- academic outputs - e.g. special issue of *Journal of Human Rights Practice*
- outputs aimed at practitioners / political actors, e.g. 'Parliaments as national guarantors of human rights' (handbook for Parliamentary Assembly of the Council of Europe)
- report of Strasbourg seminar on the ECtHR's developing remedial practice