

REGIONAL HUMAN RIGHTS PROTECTION MECHANISMS

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Abstract

After the World War II, with the establishment of the United Nations, important steps were taken in protecting human rights and ensuring gender equality across the world. In particular, in the last 50 years, the deepening of the globalization process and international economic integration, as well as the expansion of cultural and political relations, made it possible for women to be more closely involved in social and political processes. In all states, to one degree or another, the legal framework for the protection of women's rights and the provision of gender equality was formed, and mechanisms were created for the implementation of these laws. As a result of global, regional, and national policies pursued for the protection of human rights, including women's rights, and ensure gender equality, women in most countries of the world are now closely involved in economic, political, and social life on an equal footing with men.

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One of the most important values achieved by modern civilization is related to the protection of human rights. As a result, the problems in this field in the world today are global problems rather than internal problems of individual countries. The expansion of international cooperation, in particular, the establishment of the UN, allowed the creation of the necessary mechanisms for the protection of human rights. Every country is internationally responsible for people whose rights are violated. Modern human rights mechanisms allow complaints to be filed through local, regional, and international mechanisms for violations of rights. The UN mechanisms for the protection of human rights, including women's rights, are extensive and effective. In addition to these mechanisms, there are also regional and national ones. Regional and national mechanisms are formed on the basis of principles determined by international mechanisms and cannot reduce their requirements. On the contrary, the practice of implementing more effective measures through regional and national mechanisms for the protection of human rights is possible and exists.

Regional mechanisms for the protection of human rights are important from the point of view of making more flexible appeals in cases of rights violations and taking regional specificity into account. Regional mechanisms are resorted to when national mechanisms do not justify themselves. At present, there are regional mechanisms covering European countries, African countries, Caribbean countries, and American countries and providing for the protection of human rights. As we mentioned, regional mechanisms are more flexible than UN mechanisms and take into account the specificities of the region. On the other hand, such mechanisms take into account not only the protection of human rights but also the attitude of a specific citizen toward society. Among the regional mechanisms currently protecting human rights, including women's rights, we can point to the Council of Europe (CoE), the Organization for Security and Cooperation in Europe (OSCE), the Commonwealth of Independent States (CIS), the African Union, the Organization of American States, and the Organization of Islamic States. Since the research is conducted on the example of Azerbaijan, we will get acquainted with the mechanisms of protection of human rights, including women's rights,

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within the framework of the Council of Europe, the OSCE, the CIS, and the Organization of Islamic States.

The human rights protection mechanism within the framework of the EU provides for the implementation of the European Convention on Human Rights. This international treaty, which was adopted by the newly created Council of Europe in 1950, but entered into force on September 3, 1953, regulates the protection of human rights and political freedoms in Europe. It is on the basis of this Convention that the European Court of Human Rights (ECHR) was established. The scholars, Andreadakis, S. [1], Helfer [2], for example, note that the ECHR has influenced the legal systems of member states in a short period of time as an effective mechanism in the field of human rights protection.

It should be noted that the Convention was essentially formed in response to the threat to the protection of human rights as a result of the spread of communist ideology in Eastern European countries during World War II and the subsequent period.

The CoE structure is primarily composed of six bodies: 1) the Committee of Ministers; 2) the Parliamentary Assembly; 3) the European Congress of Local and Regional Authorities; 4) the ECHR; 5) the Human Rights Commissionerate; and 6) the Conference of INGOs. In addition to these bodies, 1) the General Secretary of the Council and 2) the Deputy Secretary General are included in the organizational structure of the Council. It should be noted that the main office of the JSC is located in Strasbourg, France. The Committee of Ministers is the main decision-making body of the CoE. Foreign ministers of member states or their permanent representatives gather here. The second most important body in the Council of Europe is the Parliamentary Assembly. Representatives determined by the parliaments of each member state are represented in this body. Another important body is the Congress of Local and Regional Authorities. 636 members representing more than 200,000 local and regional authorities gather here to discuss democratic changes and the development of self-government institutions at the local and regional level. This body operates mainly based on the principles of the European Charter on Local Self-Government. The ECHR, which is the subject of our research, is a body that operates permanently and serves to protect the rights of the citizens of the member states stipulated by the European Convention on Human Rights. Another body that is directly related to human rights is the Human Rights Commissioner of the Republic of Azerbaijan. As stated by Dunya Mijatovic, Commissioner for Human Rights of the Council of Europe "Today, the system of human rights protection in Europe is one of the most advanced in the world. The European Convention on Human Rights, the Court, the different monitoring mechanisms and institutions, as well as my Office, work to ensure that States uphold their obligations to protect, respect and fulfil human rights. However, structural shortcomings and a lack of political will still hinder the full realization of human rights". [3]

The EU Commissioner for Human Rights is different from the ECHR and is a non-judicial institution. This body was established in 1999 and works to raise awareness of human rights and instill respect for human rights in member states. The powers of the Commissioner for Human Rights are defined in CoE Resolution No.50(99) on the Commissioner for Human Rights [4]:

promote education in and awareness of human rights in the member States and contribute to the promotion of the effective observance and full enjoyment of human rights in the member States;

- promote education in and awareness of human rights in the member States;

- identify possible shortcomings in the law and practice;
- facilitate the activities of national ombudsmen or similar institutions in the field of human rights;

- provide advice and information on the protection of human rights in the region.

Within the premises of the Council of Ministers, the Gender Equality Commission (CGE) also operates. The CGE was created to ensure that gender equality is mainstreamed in all Council of Europe policies and to bridge the gap between commitments made at the international level and the reality of women in Europe. The members of this commission are appointed by the member states. The Commission advises other bodies of the Council of Europe and member states on ensuring gender equality. The CGE supports the implementation of the six objectives of the Council of Europe Gender Equality Strategy for 2018-2023. The CGE has wide powers. For example:

- To ensure the follow-up of the relevant decisions taken at the 131st Session of the Committee of Ministers (Hamburg, May 21, 2021) and to contribute to the implementation of the main strategic priorities related to its special area of expertise;

- Monitor and support the implementation of the Council of Europe Gender Equality Strategy (2018-2023), prepare the Gender Equality Strategy (2024-2029), and monitor and support its implementation;

- Conducting legal and political analyses in member states, including on the basis of the findings of monitoring mechanisms, as well as conducting exchanges on trends, development, and good practices;

- To conduct needs assessments and make proposals for general policy development, including the determination of key issues and standards for member states within their jurisdiction; and etc.

After Azerbaijan gained independence in 1991, the process of integration into the global world, including Europe, intensified. Since 1993, when National Leader H. Aliyev took over the leadership of the country again, the integration of Azerbaijan into the European family has accelerated. The decrees signed by H. Aliyev on July 8, 1996, "On measures to implement the cooperation program between the Council of Europe and the Republic of Azerbaijan" on January 20, 1998, "On measures to deepen cooperation between the Council of Europe and the Republic of Azerbaijan" and the decree of May 14, 1999 on measures to deepen cooperation between the Republic of Azerbaijan and the Council of Europe and protect the interests of the Republic of Azerbaijan in Europe" played an important role in the integration of our country into the Council of Europe. Since January 2001, Azerbaijan became a full member of the Council. Along with political and economic dividends, Azerbaijan's CoE membership was of great importance in aligning Azerbaijani laws on human rights protection and gender equality with European standards. As a full-fledged member of the CoE, the ratification of the Conventions adopted by the Council by Azerbaijan created wide opportunities for the protection of women's rights and ensuring gender equality in our country.

The International Conference of Non-Governmental Organizations is an institution that includes more than 400 organizations. This Conference conveys the voice of the civil societies of the member states to the Council of Europe. All bodies of the CoE are not only independent, but also interconnected. For example, the issue related to complaints referred to the ECHR is referred to the Committee of Ministers in the implementation phase. Or the CoE works in close cooperation with the Committee of Ministers of the Parliamentary Assembly.

As a regional mechanism, the European Convention on Human Rights enables the protection of the rights of more than 840 million people in 47 countries of the Council of Europe. The articles of the Convention are in full compliance with the UN Universal Declaration of Human Rights. However, despite the rapid consideration of regional peculiarities and changes related to human rights and speeding up the solution of the problem made the adoption of such a document necessary. The experience of protecting human rights in the last 70 years shows that "regional cooperation in the field of human rights complements the forms of universal cooperation and, in some aspects, ensures the protection of basic rights more effectively. [5] On the other hand, "regional legal systems are closest to the structure of society; they clearly reflect the ethnic, confessional, and socio-cultural characteristics of the united community." [6] The executive, legislative and judicial authorities of the countries acceding to the Convention are obliged to protect the rights defined in the Convention. The citizens of these countries can apply to the ECHR, provided that they use all the mechanisms related to the protection and restoration of their rights in their country.

Another important difference between the regional mechanisms for the protection of human rights, especially the ECHR, and the UDHR is the existence of legal mechanisms for the application of the former in specific cases. Thus, in cases of violation of any article of the ECHR, there is an opportunity to apply to the European Court of Human Rights (ECHR). All citizens of Member States can take advantage of this opportunity. The implementation of the ECHR is monitored by three bodies of the Council of Europe, namely the Committee of Ministers, the Commissioner for Human Rights, and the ECHR. This convention is dynamic and is constantly being improved by additions to it.

As it was earlier noted, the European Union citizens can apply to the ECHR in case of the violation of their rights. However, the application procedure is not that simple. First of all, it should be distinguished as to which violation of law should be referred to the ECHR. That is, the ECtHR can only hear cases related to violations of the ECHR and its Protocols. On the other hand, the Court has the authority to hear cases about alleging violations against a state party. The ECHR can be applied when one of the rights guaranteed by the ECHR and its Protocols, such as "right to life", "right to a fair trial (civil and criminal limb)", "right to respect for private and family life", "freedom of expression", "freedom of opinion, conscience and religion", "right to an effective remedy", "right to peaceful enjoyment of property" and "right to free elections" are violated. The Convention and its Additional Protocols prohibit

- 1) torture and inhuman or degrading treatment or punishment;
- 2) arbitrary and unlawful detentions;
- 3) discrimination in the exercise of the rights and freedoms defined in the Convention;
- 4) collective expulsion of aliens;
- 5) death penalty;
- 6) the expulsion of a citizen from the country or denial of entry to the country due to his attitude towards his country.

Some scholars point out that there are some problems with the activity of the ECHR. For instance, according to Maša Marochini [7], "despite the fact that the Convention system is the most effective system in terms of ensuring, there are some problems in the individual protection of civil and political rights." One of the biggest problems is

the overloading of the court. In 2012, the number of applications increased by 1% compared to 2011 and reached 65,150. This growth continues. Protocol No. 14 to the Convention allowed the sitting a single judge. The expansion of the powers of the three judges' committee was also an important change".

The 2018 Report on the activities of the European Court of Human Rights also mentions the large number of applications and their continued growth. However, the number of applications in 2018 was 56,000, a significant decrease from 2011 and 2012. An interesting fact is that among the applications, there are more from Russia, Romania, Ukraine, Turkey, and Italy, and there is also the name of Azerbaijan. Simplifying procedures, expanding language skills, and increasing the number of lawyers familiar with ECHR procedures have a certain effect on the number of such applications. [8]

The protection of women's rights and gender equality are of particular importance in the activities of the CoE regarding human rights. The Council of Europe and its relevant bodies have also developed certain standards related to women's rights and gender equality. According to Article 1 of the European Convention on Human Rights, which is called "Obligation to Respect Human Rights", "High Contracting Parties ensure the rights and freedoms defined in Section 2 of this Convention for everyone under their jurisdiction" [9]. This article establishes that people have equal rights regardless of gender, race, and other differences.

The Convention against Trafficking in Human Beings, adopted by the Council of Europe in Warsaw in 2005, aims to prevent and combat trafficking in women, men, and children. This Convention is also important in the development, implementation, and evaluation of measures to promote gender equality under this binding document. In Article 1 of the Convention, "combating and preventing human trafficking by ensuring gender equality" is listed among other goals. There is also an independent monitoring mechanism to assess how the provisions of the Convention are being implemented by member states.

Taking into account the recommendations of the CoE Committee of Ministers addressed to the Member States, as well as the recommendations of the PACE, Article 6 of the Convention stipulates that in order to eliminate the demand that creates conditions for all types of exploitation that lead to human trafficking, and especially the exploitation of women and children, each party must implement and strengthen legal, administrative, educational, social, cultural, and other measures.

The Convention considers measures to protect and promote the rights of victims of human trafficking by ensuring gender equality. Paragraph 1 of Article 10 of the Convention, which is called "Identification of the victims" states that "Each Party shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims, including children, and shall ensure that the different authorities collaborate with each other as well as with relevant support organizations, so that victims can be identified in a procedure duly taking into account the special situation of women and child victims and, in appropriate cases, issued with residence permits under the conditions provided for in Article 14 of the present Convention".

Article 6 of the Convention envisages "preventive measures, including educational programs for boys and girls during their schooling, which stress the unacceptable nature of discrimination based on sex, and its disastrous consequences, the importance of gender equality and the dignity and integrity of every human being".

Another important document adopted by the Council of Europe in the field of protecting women's rights and ensuring gender equality is the "CoE Convention on preventing and combating violence against women and domestic violence" (the Istanbul Convention). A two-pillar monitoring mechanism is envisaged for the evaluation of the implementation of the Istanbul Convention.

As a regional mechanism, the CoE Council of Ministers has prepared various recommendations for the Member States to protect women's rights and ensure gender equality. For example, Recommendation No.(79)10 requires Member States to adapt their national legislation and regulations to international standards regarding women migrants. The document recommends to take measures to provide the necessary information to migrant women, to prevent discrimination against them at work, provide for their socio-cultural advancement, to provide access to vocational training, and other various trainings.

According to recommendation No.R(85)2 of the Committee of Ministers, Member States are advised to create a system of legal remedies against sex discrimination. This system should implement and strengthen measures to promote equality between women and men. These and many other Committee of Ministers Recommendations are important for the protecting women's rights, increasing the role of women in the life of society, especially in political and economic life, and ensuring gender equality in society.

One of the important regional mechanisms for ensuring the protection of women's rights and gender equality is the OSCE. As a regional organization, the OSCE brings together 57 countries. The issues related to the security and cooperation of member states, including military-political, economic, and environmental issues, as well as human rights issues, are discussed within the framework of this organization. OSCE decisions are made on the basis of consensus among member states with the same rights.

In the management structure of the OSCE, decision-making bodies and executive bodies are distinguished. Regional offices and some OSCE-related bodies also play an important role in the activities of the OSCE. The function of ensuring human rights and gender equality in the structure of this organization is carried out by the "Democratic Institutions and Human Rights" Office of the OSCE, located in Warsaw. This Office supports democratic elections, protection of human rights, the rule of law, tolerance, non-discrimination, and Roman law in Member States.

In the first years of cooperation between Azerbaijan and the OSCE (Security and Cooperation Treaty in Europe until 1995 - OSCE), the main focus was on the fact of occupation of large areas of Azerbaijan as a result of Armenia's military aggression and that hundreds of thousands of people lived as refugees and displaced people. Within the frame of this cooperation, the provision of gender equality and protection of women's rights were also issues of priority along with this problem. The Government of Azerbaijan and the OSCE ODIHR have signed a Memorandum of Understanding in 1999. However, unfortunately, the agencies of the OSCE, especially the Minsk Group have not taken any specific measures for the restoration of the rights of hundreds of thousands of Azerbaijani women and children, violated in this armed conflict. In 2020, under the leadership of victorious Supreme Commander-in-Chief I. Aliyev, the Azerbaijani Army returned the occupied lands of Azerbaijan, putting an end to the injustice that had prevailed for nearly 30 years.

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