

EVOLUTION OF CIVIL RIGHTS PROTECTION MECHANISMS: A COMPARATIVE STUDY OF AZERBAIJAN AND THE EUROPEAN UNION

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Abstract

Effective protection of civil rights constitutes a fundamental element of the rule of law and a core requirement of modern civil justice systems. Contemporary legal orders increasingly recognise that the mere formal proclamation of civil rights is insufficient unless accompanied by accessible, effective, and enforceable judicial remedies. This article examines the evolution of civil rights protection mechanisms through a comparative analysis of Azerbaijan and the European Union. It explores how the concept of effective judicial protection has developed from a procedural guarantee into a substantive principle shaping civil law adjudication. Particular attention is paid to the role of courts in transforming civil rights from abstract norms into practical and effective entitlements, with special reference to the jurisprudence of the European Court of Human Rights. The article further analyses the constitutionalisation of civil remedies and the growing importance of proportionality, judicial reasoning, and enforcement as decisive elements of effective civil justice. It argues that while Azerbaijan has established a comprehensive normative framework for civil rights protection, further alignment with European standards – especially regarding access to justice, quality of judicial reasoning, and enforcement of judgments – would significantly enhance the effectiveness of civil justice. In methodological terms, the study employs comparative and doctrinal legal analysis, examining constitutional provisions, civil legislation, and judicial practice. Special emphasis is placed on the interpretative role of courts in shaping the practical effectiveness of civil rights through reasoned adjudication and enforceable remedies. The findings contribute to ongoing academic debates on the substantive dimension of civil rights protection within contemporary civil justice systems.

Keywords: civil rights; rule of law; access to justice; effective judicial protection; civil law; Azerbaijan; European Union; comparative law; effective remedies.

1. Introduction

Protection of civil rights lies at the heart of private law and represents a decisive indicator of the maturity of a legal system. In contemporary legal theory, the effectiveness of civil rights is no longer assessed solely by their legislative recognition but by the availability of mechanisms capable of ensuring their realisation in practice. This shift reflects a broader transformation from formal constitutionalism toward substantive constitutionalism, where rights are evaluated through their practical impact rather than their textual formulation.

Within this context, comparative legal analysis offers valuable insights into the strengths and weaknesses of national civil justice systems. The European Union has progressively constitutionalised the principle of effective judicial protection, while Azerbaijan has undertaken significant reforms aimed at strengthening access to justice and civil remedies. This article seeks to compare these developments and to identify lessons that may contribute to the enhancement of civil rights protection in Azerbaijan.

Civil rights traditionally encompass proprietary rights, contractual freedoms, and personal non-property rights. Classical civil law theory viewed their protection primarily as a procedural mechanism activated after a violation had occurred. Remedies were

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largely compensatory in nature and focused on restoring the pre-existing legal balance between private parties.

Modern doctrine increasingly emphasises the substantive dimension of civil rights protection. Effective protection requires not only access to courts but also procedures capable of producing timely and enforceable outcomes. The distinction between formal protection and effective protection has become central to contemporary civil law scholarship and judicial practice.

From a doctrinal perspective, civil rights protection has undergone a significant transformation in modern legal systems. Classical civil law doctrine traditionally conceived protection mechanisms as reactive instruments, activated only after a violation had occurred. However, contemporary doctrine increasingly recognises the preventive and structural dimensions of civil rights protection.

Modern scholars emphasise that effective protection must encompass not only judicial remedies but also procedural guarantees ensuring access to justice, equality of arms, and legal certainty. Civil rights protection is therefore no longer viewed merely as an adjunct to substantive civil law norms but as an integral component of their practical operation.

This doctrinal shift is closely linked to the broader development of the rule of law. Civil rights form the economic and social foundation of private autonomy, and without effective protection mechanisms, these rights risk becoming symbolic declarations rather than enforceable legal positions.

Academic discourse on civil rights protection demonstrates a gradual shift from a purely formal understanding of legal remedies toward a functional and effectiveness-oriented approach. Early civil law scholarship largely conceptualised remedies as technical instruments designed to restore disrupted private-law relations. Contemporary authors, however, increasingly assess civil justice systems based on their capacity to deliver enforceable outcomes within a reasonable time.

European legal scholarship has been particularly influential in developing the concept of effective judicial protection. Scholars argue that civil justice must be evaluated not only by the existence of procedural mechanisms but by their practical impact. Comparative studies further suggest that judicial effectiveness is closely linked to institutional factors such as judicial independence, quality of reasoning, and enforcement capacity.

II. Doctrinal Foundations and Constitutionalisation of Civil Rights Protection

The Constitution of the Republic of Azerbaijan guarantees judicial protection of rights and freedoms and affirms the right of everyone to seek redress before an independent and impartial court [6]. These constitutional guarantees are further elaborated in the Civil Code, which provides a broad catalogue of civil rights and remedies, including restitution, damages, and recognition of rights [5].

Azerbaijani civil law recognises judicial protection as a cornerstone of private law. Courts are empowered to restore violated rights and to ensure compensation for harm. Procedural legislation establishes mechanisms for filing civil claims, appealing judicial decisions, and enforcing judgments.

The jurisprudence of Azerbaijani courts demonstrates a gradual but increasingly visible constitutionalisation of civil remedies, particularly in the sphere of compensation for moral (non-pecuniary) damage. This development reflects a broader transformation

of civil justice from a formally oriented system toward one grounded in constitutional values, such as proportionality, fairness, legal certainty, and effective judicial protection.

The Constitutional Court of the Republic of Azerbaijan has played a decisive role in reinforcing the constitutional dimension of civil remedies. In its interpretative decision concerning moral damage compensation, the Court emphasised that such compensation must not be symbolic or purely formal. Instead, it must adequately reflect the nature, intensity, and duration of the suffering experienced by the claimant, while remaining proportionate to the circumstances of the case. The Court explicitly linked the assessment of moral damage to constitutional principles, thereby elevating civil remedies to the level of constitutional guarantees [7].

This interpretative approach marked an important departure from earlier judicial practices, where moral damage awards were often minimal and lacked substantive justification. By requiring courts to engage in a contextual and reasoned evaluation of non-pecuniary harm, the Constitutional Court underscored that inadequate compensation may undermine the essence of the right to judicial protection. In this sense, the Court affirmed that civil remedies are not merely technical instruments of private law but mechanisms through which constitutional rights are realised in practice.

The constitutionalisation of civil remedies is further illustrated by the decision in *Musaeva v "Memar-3" Cooperative* (2009), which demonstrated judicial willingness to annul lower court decisions where procedural or constitutional guarantees had been insufficiently applied [15]. In this case, the courts of lower instance failed to properly examine the claimant's arguments and did not ensure a fair balance between the harm suffered and the compensation awarded. The annulment of the impugned decisions signalled a growing judicial awareness that procedural deficiencies and inadequate reasoning may amount to violations of the right to effective judicial protection.

Importantly, the reasoning in *Musaeva* went beyond the correction of individual judicial errors. The decision emphasised that civil adjudication must comply with constitutional standards of due process, including the obligation to provide reasoned judgments. The absence of adequate justification in cases involving moral damage was recognised as incompatible with the principles of legal certainty and equality of arms. As a result, the case contributed to the gradual development of a more rights-oriented and constitutionally informed approach to civil remedies in Azerbaijani jurisprudence.

A significant step toward doctrinal consolidation was taken with the Supreme Court's ruling of 29 August 2025 on the unification of judicial practice concerning moral damage compensation [17]. This ruling represents a systemic effort to enhance predictability and consistency in civil adjudication, addressing long-standing concerns regarding divergent judicial approaches to non-pecuniary damage. By issuing interpretative guidance, the Supreme Court sought to harmonise judicial reasoning and to establish common criteria for the assessment of moral damage.

The Supreme Court stressed that compensation for moral damage must be determined on a case-by-case basis, taking into account the specific factual circumstances of each dispute. At the same time, it emphasised the importance of maintaining coherence in judicial practice in order to ensure equal treatment of litigants and public trust in the judiciary. This dual emphasis on judicial discretion and doctrinal consistency reflects an advanced understanding of civil remedies as instruments of effective rights protection rather than mechanical applications of statutory norms.

From a comparative perspective, these developments demonstrate increasing convergence between Azerbaijani judicial practice and European standards articulated by the European Court of Human Rights. The ECtHR has consistently held that remedies must be “practical and effective” and that inadequate compensation for non-pecuniary damage may amount to a violation of the right to a fair trial or an effective remedy [2]. The growing reliance of Azerbaijani courts on proportionality and substantive reasoning indicates a gradual internalisation of these European principles within domestic civil law.

Nevertheless, despite these positive developments, certain challenges remain. Inconsistencies persist at the level of first-instance and appellate courts, where moral damage awards may still vary considerably and judicial reasoning may lack sufficient depth. Addressing these shortcomings requires continued judicial training, clearer methodological guidance, and sustained engagement with constitutional and human rights standards [16, p. 135].

In conclusion, the evolving jurisprudence of the Constitutional Court and the Supreme Court of Azerbaijan reflects a broader transformation of civil remedies from formally defined legal tools into constitutionally grounded mechanisms of effective rights protection. The emphasis on proportionality, reasoned adjudication, and doctrinal coherence enhances the practical value of civil rights and strengthens public confidence in the civil justice system. These developments constitute an essential component of the ongoing alignment of Azerbaijani civil law with European standards of effective judicial protection.

III. Access to Justice, European standards, and effective judicial protection

Access to justice constitutes a central element of civil rights protection in Azerbaijan. Procedural legislation provides individuals with the right to bring civil claims before courts of general jurisdiction and to challenge judicial decisions through appellate and cassation procedures.

Nevertheless, the effectiveness of access to justice must be assessed not only in formal terms but also in practical operation. Duration of proceedings, predictability of judicial outcomes, and effectiveness of enforcement directly influence the ability of individuals to vindicate their civil rights. In civil disputes involving property rights or contractual obligations, delays may substantially undermine the value of the protected right.

The principle of effective judicial protection occupies a central place in EU law. Article 47 of the Charter of Fundamental Rights of the European Union guarantees the right to an effective remedy and a fair trial [4]. This provision has been interpreted broadly, encompassing access to courts, procedural fairness, and effectiveness of remedies.

The Court of Justice of the European Union has consistently held that effective judicial protection constitutes a general principle of EU law, requiring remedies that are capable of safeguarding rights in practice rather than merely in theory.

Modern civil rights protection is increasingly influenced by the concept of substantive constitutionalism. Unlike formal constitutionalism, which focuses on textual recognition of rights, substantive constitutionalism evaluates legal systems based on the actual effectiveness of rights in practice [10, p. 191].

Within this framework, civil rights are no longer perceived as purely private-law entitlements insulated from constitutional values. Instead, they are interpreted in light of fundamental rights principles such as proportionality, legal certainty, and access to justice. This approach has profoundly influenced civil adjudication within the European legal order.

The jurisprudence of the European Court of Human Rights has played a decisive role in shaping the concept of effective protection. Interpreting Articles 6 and 13 of the European Convention on Human Rights, the Court has repeatedly stressed that remedies must be “practical and effective, not theoretical or illusory” [9].

In *Airey v. Ireland*, the Court emphasised that access to justice must be effective in practice, which may require positive measures by the state [1]. In *Kudla v. Poland*, it clarified that excessive length of proceedings may itself constitute a violation of the right to an effective remedy [13].

In *Burdov v. Russia*, the Court highlighted the importance of enforcing final judicial decisions as an integral part of the right to a fair trial [2]. A civil right recognised by a court loses its practical value if the judgment remains unenforced. Similarly, in *Hornsby v. Greece*, the Court confirmed that enforcement is an essential component of effective judicial protection [11].

This jurisprudence demonstrates that civil rights protection extends beyond courtroom proceedings and encompasses the entire lifecycle of a civil claim, from initiation to enforcement.

Judicial reasoning constitutes a critical element of effective civil rights protection. In EU member states, civil judgments are expected to demonstrate clear engagement with the parties’ arguments and to provide coherent justification for the chosen remedy. This requirement enhances predictability, facilitates appellate review, and reinforces public confidence in the judiciary.

In Azerbaijan, judicial reasoning in civil cases has undergone gradual development. While courts are formally required to justify their decisions, variations in depth and consistency remain. Strengthening judicial reasoning practices would significantly contribute to the effectiveness of civil remedies.

The effectiveness of civil rights protection increasingly entails the recognition of positive obligations on the part of the state [3, p. 187]. The European Court of Human Rights has consistently held that states must organise their judicial systems in a manner that guarantees effective access to justice and enforcement of judgments.

These obligations extend to civil proceedings and influence the interpretation of remedies. Courts must assess whether available remedies provide adequate redress and whether procedural barriers disproportionately restrict access to justice.

Enforcement of civil judgments represents one of the most critical stages of civil rights protection. In the European Union, enforcement mechanisms are supported by principles of mutual recognition and effectiveness. In Azerbaijan, enforcement procedures are regulated by domestic legislation but continue to face practical challenges.

Addressing enforcement deficiencies requires legislative refinement, institutional capacity-building, and judicial oversight. Without effective enforcement, civil rights risk becoming illusory [8, p. 493].

Systemic challenges in enforcement have been identified in both European and national contexts. Delays, lack of coordination, and insufficient oversight may undermine the effectiveness of civil justice. European standards emphasise that enforcement failures constitute structural problems affecting the rule of law.

IV. Conclusion

Civil rights protection should be understood as a structural element of the rule of law rather than a purely technical aspect of civil procedure. Effective remedies,

independent courts, and enforceable judgments collectively contribute to the legitimacy of the legal system.

The gradual harmonisation of Azerbaijani civil law with European standards should be viewed as a dynamic process. Incorporating European principles concerning access to justice, judicial reasoning, and enforcement would enhance the substantive effectiveness of civil justice in Azerbaijan.

The evolution of civil rights protection mechanisms reflects a broader transformation toward substantive effectiveness in modern legal systems. Comparative analysis demonstrates that while Azerbaijan has established a solid normative framework, further alignment with European standards would significantly strengthen civil rights protection.

From a policy perspective, further development of civil rights protection may benefit from gradual measures aimed at enhancing consistency in judicial practice, improving the quality of judicial reasoning, and strengthening the effectiveness of enforcement mechanisms. Continued judicial training, interpretative guidance from higher courts, and constructive engagement with European standards could support the practical implementation of existing normative guarantees. Such an approach may contribute to greater legal certainty, stability of private-law relations, and sustained public confidence in the civil justice system.

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