

Implementation Problems of the European Convention on Human Rights in Azerbaijan

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Following the collapse of the USSR, Azerbaijan, while focusing on the process of state building, took several steps in an attempt to define its role at the international level. Although the foundations of negotiations with the European Union (EU) were laid in 1994, the Partnership and Cooperation Agreement signed in 1999 played an important role in establishing closer relations, and as a result, Azerbaijan became a member of the Council of Europe (CoE), and three years later ratified the European Convention on Human Rights (ECHR). CoE's open door policy for the newly independent post-Soviet states was supposed to encourage the development of the rule of law, protection and promotion of human rights in Azerbaijan.

Two decades after ratification Azerbaijan still has not fulfilled its obligations as specified by the convention. The implementation of the ECHR^[1] and its case law has been plagued by systematic and structural problems. In terms of executing the judgments of the ECHR, Azerbaijan has shown unsatisfactory results compared to other CoE countries.^[2]

A lack of political will seems to be the main obstacle in the way of effective implementation of the convention. My argument is that without a preliminary parliamentary institution of inspection and a normative base accompanying it, it seems hardly plausible to effectively implement and resolve contradictions between the ECHR, other international agreements, and continuously evolving national legislation.

In the next two sections of the article, apart from listing

the international standards of implementation of the ECHR, I briefly describe the implementation procedure of the ECHR in Azerbaijan according to local legislation, as well as analyze the legal problems caused by the lack of institutional mechanisms.

The implementation standards of the ECHR

According to the ECHR, after ratifying the document, states must ensure the rights and freedoms of every subject within their jurisdiction enshrined in the convention and comply with the final judgments of the European Court of Human Rights (ECtHR) in any case.^[3] In addition, the Vienna Convention on the Law of Treaties states that every valid contract is binding on its parties and must be performed by them in good faith.^[4]

It should also be noted that the case law of the ECtHR also provides an original and competent interpretation of the convention. Therefore, the national courts should look not only to the convention, but also to the case law of the ECtHR as a direct source. Considering that the convention is also called a “living instrument,” the Court recommends that the countries party to the document evaluate the interpretation and implementation of the convention “in light of current circumstances.”^[5]

Implementation of international law (or international agreements) is not a one-sided phenomenon and is distinguished in political and legal senses. In the political sense, implementation is the existence of political will for the implementation of international law through national law. This category of implementation is relatively difficult to consider because it is not always clear to what extent governments want to adopt international human rights law. However, when national states make clearly negative statements about an international agreement, it is possible to conclude that

implementation is impossible in a political sense.

In the legal sense, implementation refers to the practice of adopting legal norms through local legislative means and implementing those norms through executive and judicial legal means. Usually, when we say implementation, we mean implementation issues in the legal sense. However, implementation in the legal sense cannot be taken separately from implementation in the political sense.

The implementation of international agreements is a step-by-step process, and the following steps are included in this process: [\[6\]](#)

- 1) Acceptance and ratification of international agreements, placing comments or reservations on international agreements, and issuing declarations on international agreements;
- 2) Changing domestic legislation (constitutional, parliamentary and regulatory), adopting new legislation, changing general practice, preparing guidelines and taking other measures based on the international agreement;
- 3) Checking the status of implementation of international agreements on a periodic or ad hoc basis:

- i) Periodic control – the state that has approved the international agreement informs the international covenant control body about the implementation status of this agreement with certain periodicity and improves the implementation process based on the recommendations of that body;
- ii) Ad hoc control – consideration of cases by the international treaty control tribunal on the basis of individual and other complaints by the state that ratified the international treaty and execution of the decisions of that tribunal.

Implementation should be based on the principle of *bona fide* (good faith), which is a general principle of international law, and carried out in accordance with the Vienna Convention

on International Treaties (Article 26). The execution of international agreements should not solely rely on formal procedures, and instead, the national state should actively pursue measures to implement such agreements. The conditions mentioned above also apply to the implementation of the ECHR.

Implementation procedure of the ECHR as an international convention in Azerbaijan

In Article 12 of the Azerbaijani Constitution, it is well established that the universal human rights principles that exist in the international documents ratified by Azerbaijan have equal status to the constitution. Following the requirements of the monist model, international treaties are treated as part of Azerbaijani national law according to the constitution. In the case of disputes between national legislation related to normative legal acts (except the constitution and the acts of the referendum) and international treaties to which Azerbaijan is party, the provisions of international conventions apply. As stated in the constitution, the ECHR and other international conventions ratified by Azerbaijan are legally binding and there is no necessity to adopt special legislation on the implementation of international instruments.

In order to organize Azerbaijan's cooperation with the ECtHR, in 2003, the position of the Representative of the Republic of Azerbaijan to the European Court of Human Rights was established by a presidential decree. One of the primary responsibilities of the representative's office is to advise the government on the changes or amendments to national legislation not in line with convention standards defined by the European Court's relevant judgments.

Additionally, the national program approved by the president states the importance of the execution of the ECtHR judgments and specifically notes that governmental institutions, such as the Administration of the President, Parliament, Ministry of

Justice and Ministry of Foreign Affairs, Scientific Research Institute for Human Rights of the Azerbaijan National Academy of Sciences, as well as the Cabinet of Ministers are encouraged to involve themselves in the process of implementation and analysis recommendations made by the European Court in order to identify future actions to improve national legislation.^[7] It is worth mentioning that, compared to neighboring Armenia and Georgia, there is not a single governmental or public platform in Azerbaijan where the public can get information regarding the implementation of the judgments of the ECtHR or measures being taken by the government regarding the developments of its relationship with the European Court.

Implementation problems with the ECHR in Azerbaijan

Many CoE countries have empowered national courts to review cases based on the ECtHR decisions in accordance with procedural law related to the normative aspect of the implementation of the ECHR. In addition, the parliamentary regulations of those countries (for example, Latvia) have established a pre-control mechanism as a means of implementation in the legislative procedure. Thus, in accordance with the parliamentary regulations, it is planned to conduct a preliminary inspection to harmonize the laws to be adopted with ECtHR case law. This approach both determines the implementation through judicial instances and forms the parliamentary mechanism for them. Azerbaijan has formalized a judicial mechanism as a normative aspect of implementation, but it has not provided normative provisions on a parliamentary mechanism.^[8] The lack of formal parliamentary mechanisms for the normative aspect of implementation results in an increased risk of new laws not complying with international human rights obligations from the very beginning of the lawmaking process. Meanwhile, a normative legal framework continues to develop without the consideration of compliance to international treaties ratified by Azerbaijan,

which subsequently will lead to new human rights violations (in political practice, especially in recent years, the laws adopted in Azerbaijan are incompatible with human rights obligations).

The lack of parliamentary mechanisms also demonstrates that the Azerbaijani government is not interested in the internal implementation of human rights obligations. Additionally, the above-mentioned pre-control mechanisms in Azerbaijan have not been transferred to the Constitutional Court, and the Constitutional Court does not have the competence to review legislative acts that have not been adopted or entered into force in relation to international human rights obligations.^[9] The legal regulation of legislative activity in Azerbaijan is carried out by the Constitutional Law on the Constitution and Normative Legal Acts. Although both legal documents state that the legislation must comply inter-alia, with international law, specific mechanisms for the implementation of this principle are not formed by these legal documents. The Constitutional Law on the Constitution Normative Legal Acts requires the examination of laws and other legislative acts to be adopted as a pre-control mechanism. However, as part of the requirement, there is no criterion for verifying the compliance of these acts with international human rights treaties. As for the situation with the Constitutional Court, the experience of the Constitutional Court of Azerbaijan with human rights and freedoms is minimal. It is true that the Law on the Constitutional Court allows for individual complaints related to human rights and freedoms; however, in practice, this tool is clearly ineffective. Even the ECtHR itself, in its decisions on Azerbaijan, considered the Constitutional Court of Azerbaijan an ineffective legal instrument.^[10] As a result, Azerbaijan has not developed proper mechanisms for the implementation of international human rights obligations.

Practical aspects

When it comes to practical aspects of implementation, the state authorities discuss compliance with international human rights obligations at intergovernmental meetings. National courts are guided by the ECtHR's case law and there are regular discussions between government agencies and civil society on the implementation of the ECtHR case law. Additionally, the state authorities should keep the Council of Europe constantly informed on the measures undertaken and provide annual reports and government action plans to eliminate violations of ECtHR decisions.

Regarding the practical aspect of implementation, the situation in Azerbaijan can be summarized as follows. The Representative of the Republic of Azerbaijan to the ECtHR is responsible for communicating with the Council of Europe regarding the implementation of ECtHR decisions, in relation to Azerbaijan's experience. The representative also has the authority to proceed with the compensation proceeding and friendly settlement payments in connection with the execution of judgments delivered by the ECtHR. From this point of view, this authorized representative cannot be considered a relevant implementation body.

It also should be highlighted that the Ministry of Justice does not have a body in charge of the implementation of human rights treaties nor a clear policy regarding implementation. There is no public discussion or coordinated work between intra-governmental human rights bodies. The president periodically announces action plans on human rights; however, the content of these action plans remains general. Both the president,^[11] and the Plenum of the Supreme Court^[12] have provided recommendations to national courts on consideration of ECtHR case law. In addition, Azerbaijan's procedural legislation defines the procedure for reconsideration of cases based on ECtHR decisions as a judicial mechanism. Nevertheless, this type of judicial mechanism allows for *ad hoc* verification and is limited to specific individual cases.

Therefore, such a judicial mechanism is not an example of systematic implementation. Such implementation is diffuse and weakens the effectiveness of implementation. Based on the above (the lack of intra-governmental coordination, the individual nature of the procedural judicial mechanism), we see that the pre-control and legislative implementation mechanisms in Azerbaijan are not at the required level. From this point of view, systematic implementation mechanisms in the country are incomplete.

The most serious problem in the implementation of ECtHR decisions in Azerbaijan is the lack of political will. Since political will is an extra-legal concept, it is difficult to discuss its legal implementation. But considering the dependence of international law on the system of interstate relations, political will is inevitably involved as a practical problem of implementation.

The following statement pertains to present circumstances in Azerbaijan. For a long time, the government of Azerbaijan has not been interested in the real and practical implementation of human rights obligations, which may have contributed to the deterioration of this direction since it is based on a non-democratic political direction. From this point of view, serious problems arise in the implementation of international legal human rights obligations undertaken by the government of Azerbaijan. The practical problems I mentioned above are mainly related to the lack of political will for the real and practical implementation of human rights.

Conclusion

Thus, the root of the problem in the implementation of international legal documents in Azerbaijan is related to the inadequacy of institutional mechanisms and the lack of political will. So, as an example of the latter, the often-changing national legislation is not adapted to the international agreements to which Azerbaijan is party, and the

absence of a parliamentary preliminary control (pre-control) mechanism is conspicuous in this regard.

Translation of the court decisions of the ECtHR into Azerbaijani together with recommendations for national courts to refer to them can be a tangible technical step in the direction of implementation of the Convention.

However, in order to improve the quality of practical implementation and achieve full implementation, clear criteria and a transparent and unified mechanism should be established.

Notes and references:

[1] ECHR stands for –European Convention of Human Rights, while ECtHR stands for – European Court of Human Rights

[2] European Court of Human Rights, Analysis of statistics, November 30, 2021, https://www.echr.coe.int/Documents/Stats_pending_month_2021_BIL.PDF

[3] Article 46, ECHR

[4] Article 26, Vienna Convention on the Law of Treaties

[5] ECtHR, Tyrer v. UK, 5856/72, 25.04.1978, para.75

[6] See: <https://www.un.org/development/desa/disabilities/resources/handbook-for-parliamentarians-on-the-convention-on-the-rights-of-persons-with-disabilities/chapter-five-national-legislation-and-the-convention.html>

[7] National Action Plan, 27 december 2011, <https://president.az/az/articles/view/4017>

[8] Law on approval of the Internal Regulations of the Milli Majlis of the Republic of Azerbaijan,

<https://www.e-qanun.az/framework/4029>

[9] Constitution of the Republic of Azerbaijan, Article 130,
https://www.constituteproject.org/constitution/Azerbaijan_2016.pdf?lang=en

[10] ECtHR, Ismayilov v. Azerbaijan, 4439/04, 17 April 2008, para. 40

[11] Presidential decree on the modernization of the judicial system in the Republic of Azerbaijan and the implementation of the Law of the Republic of Azerbaijan “On amendments and additions to some legislative acts of the Republic of Azerbaijan”, <https://e-qanun.az/framework/11357>

[12] Decision of the Plenum of the Supreme Court, No.5, 30.05.2006, <http://supremecourt.gov.az/post/view/163>