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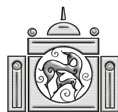

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Irakli Adeishvili*

Trends of Protection of Women's Rights in the Case Law of European Court of Human Rights

Protection of Women's Right became very acute in Georgia recently. Therefore, the article aims to analyze the existing trends in European Court of Human Rights as well as which approaches are established in European Court of Human Rights in this regard, taking into consideration that the European Convention of Human Rights does not contain a special provision about the protection of women's rights. Together with the theoretical deliberation there are underlined initial discussions contained in the classical historical cases in this Article. In addition, the Article analyzes recently created case law of European Court of Human Rights having fundamental significance for the protection of women's rights and the author concludes that through the evolution of the case law of European Court of Human Rights the European Convention of Human Rights becomes an effective legal document for the protection of women's rights.

Keywords: *European Court of Human Rights (ECHR), Case Law of ECHR, Women's Rights, Domestic Violence, Positive Obligation, Osman Test, Evolution of case Law of ECHR.*

1. Introduction

Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the Convention) was signed on November 4-th 1950 and became effective for the certain part of its signatory states as early as 1953[1]. However, its significance and influence has been increasing year after year. The clear evidence of its increasing significance is the fact that European Court of Human Rights established according to the Convention is sometimes called as "the conscience of Europe[2]". There are many reasons of such popularity but the main reason is creation of the most effective human rights protection system for the person under the jurisdiction of the states, members of the Council of Europe.

Together with the emergence of the human rights in the international community, from 70-ies of the last century the protection of women's rights became more and more sharp issue in the international agenda. Finally, those issues have been solved by such a fundamental document as the Convention on Elimination of all Forms of Discrimination Against Women adopted by General Assembly of UN on November 18, 1979. This Convention included many specific issues related with the protection of women's rights under the umbrella of general human rights protection and at the same time, established supervisory body over the protection and implementation of the rights guaranteed by the convention – Committee for the Elimination of Discrimination against Women. Despite this fact, according to some scholars international human rights law has not yet been applied effectively to redress the disadvantages

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[1] <http://www.echr.coe.int/Pages/home.aspx?p=basictexts&c=#n1359128122487_pointer>.

[2] <http://www.echr.coe.int/documents/anni_book_content_eng.pdf>.

and injustices experienced by women by reason only of their being women[3]. In this sense, respect for human rights failed to be "universal"[4].

According to scholars, the UN human rights system aimed to promote and protect the enjoyment of human rights by women in two ways: through the principles of non-discrimination and equality in its *mainstream* human rights treaties and through these principles in a *women-specific* human rights treaties[5]. However, none of these norms is sufficiently broad or focused to have more than a minimal impact in controlling or eradicating violence against women[6].

After the adoption of international and regional conventions, the responsibility of states to protect women's right increased. Of course, the state can be imputed to the activities of its agents but whether or not the state maybe impugned with any obligation if women's rights are violated by other persons? This question has a positive answer in theory, especially in relation to such breaches of women's rights as domestic violence[7]. The evolving concept of state responsibility for acts of violence and the subsequent recognition of domestic violence as a violation of human rights is a recent advance in international law[8].

At the same time, international human rights law has been used to establish standards that transcend national barriers and has opened up to external scrutiny atrocities that would otherwise have remained solely the concern of the states wherein they were perpetrated[9].

Fight for the protection of women's rights and adoption of the specific international legal instruments resulted in increasing number of applications to international legal institutions[10]. Among increase in such applications the most noteworthy is the call for applying to ECHR[11]. Despite the diversity of the rights enshrined in the Convention, it did not include any specific provision for the protection of women's rights. When reviewing the text of the Convention, one might have an impression

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3 *Cook R.J.,* Women's International Human Rights Law: The Way Forward" in *Cook R.J. (ed.)*, Human Rights of Women: National and International Perspectives, University of Pennsylvania Press, 1994. 3.

4 Ibid.

5 *Van Leewen F.*, Women's Rights are Human Rights!: The Practice of the United Nations Human Rights Committee and the Committee of Economic, Social and Cultural Rights, in *Hellun A., Aasen N. S. (eds.)* Women's Human Rights. CEDAW in International, Regional and National Law, Cambridge University Press, 2012, 246.

6 *Fitzpatrick J.*, The Use of International Human Rights Norms to Combat Violence Against Women, in *Cook R.J. (ed.)*, Human Rights of Women: National and International Perspectives, University of Pennsylvania Press, 1994, 532.

7 *McQuigg R.J.A.,* International Human Rights Law and Domestic Violence, the Effectiveness of International Human Rights Law, Routledge 2011, 7.

8 *Hasselbacher L.*, State Obligations Regarding Domestic Violence: The European Court of Human Rights, Due Diligence and International Legal Minimums of Protection, 8 Nw.J.Int'l Hum. Rts. 190 (2010), 192, <http://scholarlycommons.la.northwestern.edu/njihr/vol8/iss2/3>, [19.04.2017].

9 *McQuigg R.J.A.,* International Human Rights Law and Domestic Violence, the Effectiveness of International Human Rights Law, Routledge 2011, 2.

10 See, Convention for the Protection of Human Rights and Fundamental Freedoms, 1950; American Convention on Human Rights, 1969; International Covenant on Civil and Political Rights, 1966; Convention on Elimination of all Forms of Discrimination against Women, 1979.

11 *McQuigg R.J.A.,* The Use of Litigation as a Vehicle for Implementation, in *McQuigg R.J.A.,* International Human Rights Law and Domestic Violence, the Effectiveness of International Human Rights Law, Routledge 2011, 16-18.

that this instrument might not be as effective for the protection of women as for the protection of other rights directly stipulated therein. Although even in the very first cases heard by ECHR there did emerge the issue of protection of women's right[12]. In spite of non-existence of specific rules. ECHR by means of interpretation of the Conventional provisions created a vast case law providing for the efficient legal response to the breach of women's rights. At the same time, adequate protection of women's rights is an important issue for Georgia, since in couple of cases there have been established non-conformities of existing practice or approaches with the international standards[13].

Therefore, the present article shall attempt to answer how efficiently ECHR protects a wide range of women's rights without direct stipulation of such rights within the text of the Convention and what is the influence of the principle of state's positive obligation established by case law over such protection. In order to answer those questions, the essence and purpose of positive obligation, as well as its usage in the very first cases shall be analyzed. Thereafter, we shall reveal ECHR's approach to the protection of women's rights through the most significant cases related with women's rights in a way that the evolution of normative basis in relation to women's right is clearly established.

2. Definition of Positive Obligation and its Essence

Before explaining the emergence of the notion of positive obligation, it is essential to make a brief overview why this notion emerged at all in the practice. It is widely accepted that the subject of public international law are the states and natural or legal persons are not directly bound by public international law.

The concept of human rights evolved to protect the rights of the individual from encroachment by the state[14]. However, the rights norms that emerged were generally formulated in a very negative manner whereby the state was required only to refrain from violating the rights in question[15].

The objective of the framers of the earlier human rights instruments was to ensure that there was a space wherein the individual would be "left alone" by the state[16]. Their aim was not to obtain positive entitlements from the state, and neither was it to compel the state to intervene in a situation whereby the rights of one individual were being breached by another private entity[17].

It should be noted that human rights law has developed in such a manner as to create a range of ways in which it may now enter into the private sphere[18]. One of such ways is a concept of state responsibility under which positive obligation can be placed directly on the state to ensure that human rights standards are upheld in situations involving only private individuals[19].

12 Airey v. Ireland, judgement of October 9, 1979, No. 6289/73. Marckx v. Belgium, Judgement of June 13, 1979, No. 6833/74.
13 CEDAW Communication No. 24/2009, 13 July 2015, X and Y v. Georgia.
14 *McQuigg R.J.A.,* International Human Rights Law and Domestic Violence, the Effectiveness of International Human Rights Law, Routledge 2011, 4.
15 Ibid.
16 Ibid.
17 Ibid.
18 Ibid, 7.
19 Ibid.

Some of the most important writing tackling the issue of human rights violations by private parties are contained in a book of individual articles entitled *Privacy and human rights*[20]. In his contribution, "Twenty Years" Experience of the Convention and Future Prospects, Phedon Veglaris pointed out: "The only qualitative difference between private infringements of this kind [on human rights] and those which may be perpetrated by public authorities is that the private individual, unless he manages to establish a de facto government, can never legally remove or impair any of these rights or freedoms, either generally or individually[21]".

This explanation affirms the basic principle that when human rights are violated by non-state actors, these rights have still a binding effect and hence they are legally actionable[22]. Therefore, it is the responsibility of the state to regulate private conduct and duly enforce the regulated standards[23]. In this regard, the sovereign state becomes accountable for acts of interference of private parties[24]. Interestingly enough, this approach developed gradually in the academic research of other scholars and eventually found its expression in case law[25].

However, such a development did not take place at once and it took quite some time. Taking into account that there were number of doctrines to define states' international undertakings by control bodies[26], the ECHR has for its part opted for a simpler, two-pronged approach, dividing states' obligations into two categories: a) negative obligations and b) positive obligations[27].

In general, there are quite a lot of negative obligations of the state depicted in the text of the Convention. Couple of positive obligations can also be found therein. However, the concept of the positive obligations and the whole bunch of such obligations have been created under the influence of *Belgian Linguistic Case* in the end of 60-ies of the last century[28]. According to scholars, resorting to the concept of positive obligation has enabled the Court to strengthen, and sometimes extend, the substantive requirements of the European text[29].

Despite the fact that the evolution of the concept of positive obligations was preceded by strong theoretical and scientific works, motivation of legal grounds for such obligations was still of utmost

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20 *Vegleris P*., "Twenty Years" - Experience of the Convention and Future Prospects, in *Robertson A.H. (ed.)*, Privacy and Human Rights (Reports and Communications Presented at the Third International Colloquy about the European Convention on Human Rights, 30 September – 3 October, 1970), Manchester: Manchester University Press 1973, 382, in *Xenos D.,* The Positive Obligations of the State under the European Convention of Human Rights, Routledge, 2011, 19.

21 Ibid.

22 *Xenos D.,* The Positive Obligations of the State under the European Convention of Human Rights, Rutledge, 2011, 19.

23 Ibid.

24 See in details, *Xenos D.,* The Positive Obligations of the State under the European Convention of Human Rights, Routledge, 2011, 20-22.

25 Ibid.

26 See in details *Akandji-Kombe J-F*., Positive Obligations under ECHR. A Guide to the implementation of ECHR, Human Rights Handbooks, No 7, Council of Europe, 2007, 4-5.

27 Ibid, 5.

28 Ibid.

29 Ibid, 6.

significance since the member states not only had to accept the concept of positive obligations but also had to restore rights breached through such obligations. Therefore, it was one of the most challenging tasks of ECHR to prove legal background of positive obligations and to enforce them steadily. This task was even more challenging when through concept of positive obligation there took place such an interpretation of the Conventional provision which could have adverse consequences for the state. Additionally, the concept of *ratione matiriae* implies that the Convention protects only those rights and enforces those obligations that are stipulated in the Convention i.e. those obligations that were accepted by the states at the material time (i.e. when signing the Convention and additional Protocols).

Thus, ECHR attempted and quite successfully, to prove the existence of the concept of positive obligations in the text of the Convention. If initially this obligation was found only in the rule of the Convention dealing with substantial right and in relation to procedural rule it could be established only in conjunction with Article 1, today ECHR bases both procedural and substantive positive obligations on a combination of the standard-setting provisions of the European text and Article 1 of that text[30].

In accordance with Article 1 of the Convention "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention". The scholars believe that with the decisions in cases *Assanidze v. Georgia* and *Ilascu and others v. Moldova and Russia*, Article 1 of the Convention is seen more than ever as the cornerstone of the Convention system, to the point that it constitutes an independent source of general obligations – which are also positive obligations – on states[31]. For example, in the *Assanidze* judgment, the Court found that Article 1 implied and required the implementation of a state system such as to guarantee the Convention system over all its territory and with regard to every individual[32].

It is clear from what has been said that the positive obligations stem from the duty to protect persons placed under the jurisdiction of the state and the state will perform that duty mainly by guaranteeing observance of the Convention in relations between individuals[33]. Thus the theory of positive obligations is underpinning the very marked trend towards extending the scope of the Convention to private relations between individuals which is called "horizontal effect"[34]. In practical terms, it is because the state has been unable legally or materially to prevent the violation of the right by individuals and otherwise because it has not made it possible for the perpetrators to be punished, that it risks being held responsible by the European Court[35]. This is why, Jean-Francois Akadji-Kombe makes a categorical declaration in his work that "As the law stands at present, then, it may be said that the establishment and development of the horizontal effect of the Convention by the European Court is, in its entirety a consequence of the theory of positive obligations[36]". From this analysis it become clear that the concept of positive obligations occupies a significant part in ECHR's activities.

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30 See in details *Akandji-Kombe J-F.*, Positive Obligations under ECHR. A Guide to the implementation of ECHR, Human Rights Handbooks, No 7, Council of Europe, 2007, 8.
31 Ibid, 9.
32 Ibid.
33 Ibid, 14.
34 Ibid.
35 Ibid.
36 Ibid, 15.

3. First Cases of Positive Obligation and "Osman" Test

The doctrine of positive obligations was applied by ECHR in order to define state's duties in relations of private individuals. However, is it possible to use this doctrine for the protection of women's rights? Most of cases of women's rights violations occurs in such situations which do not emerge on surface or may emerge after significant amount of time. In addition, lots of cases of women's rights violations take place outside of state's authority - in personal relations.

The application of positive obligations in the Court's jurisprudence begins with the judgments in the cases of *Marckx* and *Airey* in 1979[37]. In both these cases, the Court's ruling should be considered quite ahead of its time, even by current standards, in that the issue of protection of human rights against acts of interference from private actors was either not relevant (as in *Marckx*) or did not concern the general question of the state's indirect responsibility as such (as in *Airey*)[38]. At the same time, it is essential to note that both of these cases more or less concern particularly the protection of women's rights.

a) Marckx v. Belgium (Judgment of July 13, 1979, Case No 6833/74)

At the material time, under Belgian legislation no legal bond between an unmarried mother and her child resulted from the mere fact of birth as well as from the fact of indication of mother's name and surname in the birth certificate - neither legal bond as a parent and son/daughter nor legal bond in relation to inheritance. It was also necessary to perform maternal affiliation of a child by means of voluntary recognition of a child by mother or by means of legal proceedings. The latter could be fulfilled by the child within 5 years from achieving legal capacity. At the same time, the child had limited inheritance rights over the estate of his/he mother but not over the estate of mother's relatives. Only legitimation and legitimation by adoption placed an "illegitimate" child on exactly the same footing as a "legitimate" child; both of these measures presupposed the mother's marriage[39].

When ECHR discussed applicability of Article 8 of the Convention over this case, it turned to the concept of positive obligation and absolutely clearly underlined essence of this concept as well as its relevance to the case. In particular, ECHR directly stressed out in paragraph 31 of the judgment

The first question for decision is whether the natural tie between Paula and Alexandra Marckx gave rise to a family life protected by Article 8 (art. 8).

By guaranteeing the right to respect for family life, Article 8 (art. 8) presupposes the existence of a family. The Court concurs entirely with the Commission's established case-law on a crucial point, namely that Article 8 (art. 8) makes no distinction between the "legitimate" and the "illegitimate" family. Such a distinction would not be consonant with the word "everyone", and this is confirmed by Article 14 (art. 14) with its prohibition, in the enjoyment of the rights and freedoms enshrined in the Convention, of

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[37] *Xenos D.,* The Positive Obligations of the State under the European Convention of Human Rights, Routledge, 2011, 22.

[38] Ibid.

[39] Marckx v. Belgium, [1979], ECHR, (HUDOC).

discrimination grounded on "birth". In addition, the Court notes that the Committee of Ministers of the Council of Europe regards the single woman and her child as one form of family no less than others (Resolution (70) 15 of 15 May 1970 on the social protection of unmarried mothers and their children, para. I-10, para. II-5, etc.).

Article 8 (art. 8) thus applies to the "family life" of the "illegitimate" family as it does to that of the "legitimate" family. Besides, it is not disputed that Paula Marckx assumed responsibility for her daughter Alexandra from the moment of her birth and has continuously cared for her, with the result that a real family life existed and still exists between them.

It remains to be ascertained what the "respect" for this family life required of the Belgian legislature in each of the areas covered by the application.

By proclaiming in paragraph 1 the right to respect for family life, Article 8 (art. 8-1) signifies firstly that the State cannot interfere with the exercise of that right otherwise than in accordance with the strict conditions set out in paragraph 2 (art. 8-2). As the Court stated in the "Belgian Linguistic" case, the object of the Article is "essentially" that of protecting the individual against arbitrary interference by the public authorities (judgment of 23 July 1968, Series A no. 6, p. 33, para. 7). Nevertheless it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in an effective "respect" for family life.

This means, amongst other things, that when the State determines in its domestic legal system the regime applicable to certain family ties such as those between an unmarried mother and her child, it must act in a manner calculated to allow those concerned to lead a normal family life. As envisaged by Article 8 (art. 8), respect for family life implies in particular, in the Court's view, the existence in domestic law of legal safeguards that render possible as from the moment of birth the child's integration in his family. In this connection, the State has a choice of various means, but a law that fails to satisfy this requirement violates paragraph 1 of Article 8 (art. 8-1) without there being any call to examine it under paragraph 2 (art. 8-2).

Article 8 (art. 8) being therefore relevant to the present case, the Court has to review in detail each of the applicants' complaints in the light of this provision.

It clearly derives from this paragraph that ECHR directly indicated to the positive obligation of the state to protect "family" life through creating such a legislation which provides full protection of the child born without wedlock and his/her parent.

b) Airey v. Ireland (Judgment of October 9, 1979, Case No 62830/73)

At the material time, legislation in force in Ireland required to pass through a special procedure in High Court for judicial separation of spouses. As statistics showed, out of 250 cases heard in High Court, the plaintiff always used to be represented by a lawyer. In this particular case Mrs. Airey could not hire a lawyer and defend her rights with lawyer's assistance. She applied to ECHR to assess whether or not Article 6.1 of the Convention was violated. ECHR noted the following in paragraph 26 of its judgment:

The conclusion appearing at the end of paragraph 24 above does not therefore imply that the State must provide free legal aid for every dispute relating to a "civil right".

To hold that so far-reaching an obligation exists would, the Court agrees, sit ill with the fact that the Convention contains no provision on legal aid for those disputes, Article 6 para. 3 (c) (art. 6-3-c) dealing only with criminal proceedings. However, despite the absence of a similar clause for civil litigation, Article 6 para. 1 (art. 6-1) may sometimes compel the State to provide for the assistance of a lawyer when such assistance proves indispensable for an effective access to court either because legal representation is rendered compulsory, as is done by the domestic law of certain Contracting States for various types of litigation, or by reason of the complexity of the procedure or of the case.

As regards the Irish reservation to Article 6 para. 3 (c) (art. 6-3-c) , it cannot be interpreted as affecting the obligations under Article 6 para. 1 (art. 6-1); accordingly, it is not relevant in the present context[40].

The conclusions reached in *Airey* case directly point to the positive obligation of the state to provide legal aid in certain cases even if such cases determine civil right.

In spite of ECHR's approaches to the abovementioned cases, it was the case *Osman v. UK*, which became of cornerstone where ECHR specifically underlined what should be implied under state's positive obligation. Some scholars refer to this approach as *Osman Test*[41].

That case concerned the murder of the senior teacher and wounding of his son as well murder of the parent of the pupil and wounding the pupil by the teacher with psychological problems. Before all those sad events there took place number of actions of that teacher which had been known to the law enforcement officials and could cause sufficient ground for suspicion that the teacher intended to commit much grosser crime.

In paragraph 116 ECHR emphasized *"In the opinion of the Court where there is an allegation that the authorities have violated their positive obligation to protect the right to life in the context of their above-mentioned duty to prevent and suppress offences against the person (see paragraph 115 above), it must be established to its satisfaction that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk*[42]".

The "Osman Test" revolves around the element of knowledge that is pertinent in the determination of the state's positive obligation[43].

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[40] Airey v. Ireland, [1979], ECHR, (HUDOC).

[41] See *Xenos D.,* The Positive Obligations of the State under the European Convention of Human Rights", Routledge, 2011, 111.

[42] Osman v. United Kingdom, [1998], ECHR, (HUDOC).

[43] *Xenos D.,* The Positive Obligations of the State under the European Convention of Human Rights, Routledge, 2011, 111.

4. Evolution of the Protection of Women's Rights in Case Law

After discussion of the essence of the positive obligation and its applicability to the women's rights, we shall briefly touch upon the evolution of the case law in the area of women's rights.

The case of *Kontrova v. Slovakia* was one of the first cases dealing directly with protection of women's rights and despite the fact that violation of Article 2 of the Convention was established not in relation with the applicant but in relation to her children, this case is still considered as one of the most significant cases for the protection of women's right especially for elimination of domestic violence.

In the present case, the applicant notified local police department in writing about her husband's violence (however, she later withdraw her notification as it was advised by police officer) and afterwards, she informed the police by phone that her husband was threatening to kill himself and the children. Police moved her to her parents and interrogated her. However, after couple of days her husband shot their two children and himself dead.

When motivating its judgment ECHR considered first part of Article 2 imposing a positive obligation on the state and underlined that "*the first sentence of Article 2 § 1 enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction. This involves a primary duty on the State to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions*[44]".

Repeating "Osman Test", ECHR concluded that failure to adopt appropriate measures by police caused violation of Article 2. The applicant also complained that Article 8 of the Convention was also violated but since this complaint had the same factual background as complaint under Article 2 which was considered violated, ECHR came to a conclusion that it was not necessary to examine the facts of the case separately under Article 8 of the Convention. At the same time, because there was no effective remedy in the state to make a claim in respect of non-pecuniary damage, ECHR also considered that there was a breach of Article 13 of the Convention taken together with Article 2.

Such an approach of ECHR was even widened in another case *Bevacqua and S. v. Bulgaria*. As scholars point out this case, together with *Opuz v. Turkey* case, these two cases signify a turning point for ECHR and international law, specifically, they enumerate several identifiable minimums which give practical substance to judging a state's adherence to the principles of protection, investigation and prosecution[45].

In *Bevacqua and. S. v. Bulgaria* applicant lady filed a lawsuit for divorce and at the same time requested for an interim custody order to set second applicant's - a child's – residence place to be

[44] Kontrova v. Slovakia, [2007], ECHR, (HUDOC), § 49.

[45] *Hasselbacher L.*, State Obligations Regarding Domestic Violence: The European Court of Human Rights, Due Diligence and International Legal Minimums of Protection, 8 Nw.J.Int'l Hum. Rts. 190 (2010), 203, <http://scholarlycommons.la.northwestern.edu/njihr/vol8/iss2/3>, [19.04.2017].

mother's place. Local court failed to hear in time interim order which caused many conflicts and disputes between the applicant and her husband, who battered her and inappropriately treated the child.

Now ECHR did invoke Article 8 and noted that "*As regards respect for private life, the Court has previously held, in various contexts, that the concept of private life includes a person's physical and psychological integrity. Furthermore, the authorities' positive obligations – in some cases under Articles 2 or 3 and in other instances under Article 8 taken alone or in combination with Article 3 of the Convention – may include, in certain circumstances, a duty to maintain and apply in practice an adequate legal framework affording protection against acts of violence by private individuals*[46]". Eventually ECHR criticized local courts' handling of the interim measures issue for more than 8 months and concluded that such inaction adversely affected applicant and her child. Lack of sufficient measures by authorities in reaction to applicant's husband amounted to a failure to assist the applicant contrary to the State's positive obligations under Article 8 of the Convention to secure respect for their private and family life.

It should also be noted that the applicant also complained of the length of the custody proceedings as violating Article 6 para 1., based on the same factual backgrounds. However, ECHR considered that failure to examine interim measures for 8 months breached Article 8, although it was not sufficient for violating Article 6. Para.1 because this Article concerned examination of the merits of the civil case. According to ECHR, hearing on merits of the case took place within reasonable time.

It becomes clear that taking into consideration the peculiarities of a case ECHR gradually used to increase normative base that might be violated through violation of women's rights. In this end, ECHR made its most far reaching and brave conclusions in case *Opuz v. Turkey*. According to the facts of the case applicant lady and her mother were victims of systematic physical abuse of the husband (son in law). There took place number of investigations against husband one of which ended with his three months detention which later has substituted by a penalty. Eventually, despite lots of complaints and investigations, offender shot dead the mother of the applicant. During the hearing of this criminal case in domestic courts he was released from prison because of expiration of maximum term of pre-trial detention in spite of his conviction for 15 years of imprisonment.

ECHR invoked Article 2 and 3 of the Convention and as in previous cases, it established violation of the above mentioned Articles. However, the present case does differ from other cases because of the special attention of ECHR on Article 14 and in relation to women's right protection ECHR for the first time in its history, established violation of Article 14, in conjunction with Articles 2 and 3.

ECHR invoked the arguments about the content of discrimination developed in classical case of indirect discrimination *D.H. and others v. Czech Republic*, as well as applied to the definition reiterated by the Committee on the Elimination of All Forms of Discrimination Against Women that violence against women, including domestic violence, is a form of discrimination. ECHR also invoked resolution 2003/45 of the United Nations Commission on Human Rights stipulating "*all forms of violence against women occur within the context of de jure and de facto discrimination against women and the lower*

[46] Bevacqua and S. v. Bulgaria, [2008], ECHR, (HUDOC), § 66.

status accorded to women in society and are exacerbated by the obstacles women often face in seeking remedies from the State[47]."

Together with other evidences, ECHR also discussed conclusions of two non-governmental organizations as well as some statistical data and came to the conclusion "*that the general and discriminatory judicial passivity in Turkey, albeit unintentional, mainly affected women, the Court considers that the violence suffered by the applicant and her mother may be regarded as gender-based violence which is a form of discrimination against women*[48]".

This case became a huge source of interest for the legal scholars working on the women's rights and became a foundation of number of researches. "The Opuz decision has clear social implications as well. Failure to adequately enforce Convention protections can arise from discrimination embedded in social institutions and practices. A showing of systemic discrimination can be supported by reports and statistics documenting a lack of sufficient law enforcement activity to protect women from domestic violence[49]".

Thus, in cases of women's rights violations ECHR initially established violation of Article 2 but gradually together with increase of seriousness of the cases it methodologically enhanced normative bases and additionally established violation of Article 8, together with article 3. Eventually, in conjunction with Articles 2 and 3 ECHR also found possibility of violation of Article 14. Such an increase in normative base positively influences protection and promotion of women's rights.

5. Conclusion

Despite existence of number of mechanisms for the protection of women's rights in contemporary international law, such a regional instrument as ECHR, still remains one of the most effective tribunals in the area of women's rights protection. Although there is not a direct stipulation in the text of the European Convention for the Protection of Human Rights and Fundamental Freedoms on women's rights, ECHR by means of establishing the doctrine of positive obligation and introducing it in the very first cases achieved that the states bear responsibility to women within their jurisdiction not only for those violations carried out by state officials but also by private individuals. In addition, if initially conventional protection included only so called core rights[50], time after time, as a result of increase in diversity and seriousness of cases, applicable normative base developed through evolution and encompassed also Articles 8 and 14 (in conjunction with Articles 2 and 3). Taking into consideration all the above mentioned it should be underlined that ECHR strictly protects women's rights and the role of the doctrine of state's positive obligation in this end is enormous.

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47 Opuz v, Turkey, [2009], ECHR, (HUDOC), § 188.
48 Ibid, § 200.
49 *Abdel-Monem, T.*, Opuz v. Turkey: Europe's Landmark Judgment on Violence Against Women. Human Rights Brief 17, no. 1 (2009): 32.
50 See <http://www.echr.coe.int/Documents/Priority_policy_ENG.pdf >, [03.06.2017].

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