

діяльність профспілок. Це Закон України “Про колективні договори і угоди”, який визначає профспілки стороною колективних переговорів (ст. 3), установлює право профспілок на ведення колективних переговорів та укладання колективних угод, договорів (ст. 4), забороняє членам профспілкового виборного органу представляти інтереси власника (ст. 6), право щодо включення в колективний договір гарантій діяльності профспілок на підприємстві (ст. 7), право на підтримку своїх вимог проводити масові заходи (ст. 11), відповідальність за ухилення від участі в переговорах (ст. 17), невиконання колективного договору, угоди (ст. 18) та за ненадання інформації (ст. 19). Закон “Про порядок вирішення колективних трудових спорів (конфліктів)” визначає право профспілок бути стороною колективного трудового спору (ст. 3), а також права стосовно формування вимог (ст. 4), порядку їх розгляду (ст. 5) та багато інших законів [5].

Значну роль в активізації захисної функції профспілок відіграють Конвенції Міжнародної організації праці. Частиною 4 ст. 4 Закону України “Про професійні спілки, їх права та гарантії діяльності” встановлено: “Якщо міжнародними договорами, угодами, конвенціями, згода на обов’язковість яких надана Верховною Радою України, передбачено більш високий рівень гарантій щодо забезпечення діяльності профспілок, то застосовуються норми міжнародного договору або угоди”. Зазначимо, що на цей час прийнято декілька Конвенцій, які регулюють права профспілок у різних галузях економіки.

Аналіз розвитку законодавства про профспілки свідчить про те, що останні на різних етапах розвитку держави займали неоднакове становище від обмеження до одержавлення й надання їм навіть деяких державних функцій. Але на всіх етапах основним напрямом їх діяльності була функція представництва та захисту. Так, зокрема, починаючи з 90-х років ХХ століття деякі права профспілки втратили. Основними напрямками в їх діяльності залишається здійснення представницької та захисної функції. І на майбутнє ці функції мають бути основними.

Отже, можна зробити висновки, що основні права та гарантії діяльності профспілок передбачені в Законі України “Про професійні спілки, їх права та гарантії діяльності”. Але крім цього Закону є багато інших нормативно-правових актів, які закріплюють окремі права та гарантії діяльності профспілок. Профспілки є й залишаються наймасовішою громадською організацією, яка об’єднує значну кількість працівників. Ця організація займає важливе місце серед інших громадських організацій тому, що вона об’єднує людей праці, а праця є

основною умовою для існування самого суспільства. При загальному падінні чисельності профспілок зберігається досить високий показник охоплення працівників профспілковим членством.

Підводячи підсумки, зазначимо, що профспілки охоплюють працюючих усіх регіонів країни, усі галузі економіки, усі форми власності та господарювання. Відбувається поступове відокремлення об’єднань найманих працівників і об’єднань підприємців (роботодавців).

Отже, основні тенденції розвитку та вдосконалення законодавства про профспілки, їх права та гарантії діяльності полягають: по-перше, у тому, що воно здійснюється відповідно до існуючих суспільних відносин; по-друге, у відмові від невластивих профспілкам як громадській організації повноважень; по-третє, у збереженні, закріпленні та розширенні прав, які дозволяють профспілкам відстоювати трудові, соціально-економічні права та інтереси працівників.

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SAFEGUARD OF WOMEN AND CHILDREN'S RIGHTS IN EXTREME CONDITIONS

Міжнародне право приділяє особливу увагу охороні й захисту прав жінок і дітей. У зв’язку з цією проблемою в національній правовій системі також проведено безліч організаційно-правових заходів. Але, незважаючи на це, з часу початку Нагірно-Карабаського конфлікту спостерігається безліч фактів порушення прав жінок і дітей. Досі ця проблема не знайшла свого рішення у світлі вимог міжнародного кримінального права. З приводу порушення прав жінок та дітей повинні бути вжи-

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ти необхідні заходи і засуджені міжнародним правом.

Ключові слова: права жінок, права дітей, міжнародне право, Нагірно-Карабаський конфлікт, військовий стан, екстремальна ситуація, Організація Об’єднаних Націй, світопорядок на основі панування права.

Международное право уделяет особое внимание охране и защите прав женщин и детей. В связи с этой проблемой в национальной правовой системе

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также проведено множество организационно-правовых мероприятий. Но, несмотря на это, со времени начала Нагорно-Карабахского конфликта наблюдается множество фактов нарушения прав женщин и детей. До сих пор эта проблема не нашла своего решения в свете требований международного уголовного права. По поводу нарушения прав женщин и детей должны быть предприняты необходимые меры и осуждены международным правом.

Ключевые слова: права женщин, права детей, международное право, Нагорно-Карабахский конфликт, военное положение, экстремальная ситуация, Организация Объединенных Наций, миропорядок на основе господства права.

International law pays special attention to preservation and protection of the rights of women and children. In connection with this problem in the national legal system also have been many organizational and legal measures. But in spite of this, since the beginning of the Nagorno-Karabakh conflict there are many violations of the rights of women and children. Until now, this problem has not been solved in the light of the requirements of international criminal law. Regarding the violation of the rights of women and children to be taken necessary measures and condemned by international law.

Keywords: women's rights, children's rights, international law, Nagorno-Karabakh conflict, the military situation, an extreme situation, the United Nations, the world order based on the rule of law.

The globalizing world draws attention with often change of events and processes, specific features of wars, conflicts, natural disasters, epidemics, epizootics, ecological and other disasters. In general, the state of emergency, as well as the military situation and the situation of war, require the general and individual approach. However, should be noted, unequivocally, that these special circumstances can be realized by giving particular attention to the protection of human rights and freedoms, by always keeping it at focus and in the context of exclusive approach. During the existence of the USSR, these issues were regulated and managed by the union of states. For instance, the decree of the Presidium of the USSR Supreme Soviet "On the martial law" dated June 22, 1941 is remembered by coming into operation of a special regime in the country [11, 3]. In fact, the history of such situations begins from ancient times. In XVII-XIX centuries the term "institution of the state of emergency" was put into operation in Europe.

Great thinker Charles Montesquieu wrote that even the experience of utterly free nations proves that there may be cases, though for a short period of time, may raise the need to cover the freedom with "veil" [12, 92]. The institution of the state of emergency in the history of Russia emerged on August 14, 1881 with the adoption of regulations "On measures for the preservation of law and order". The international instrument, "On the minimum standards of basic human rights in exceptional circumstances" which was adopted in 1984, in Paris Conference, has established the legal framework for the implementation of the emergency situation and minimum standards of human rights protection in this case. One of the most important problems of the international protection of human rights in emergency situations directed to ensure the reliable protection of human rights [7, 5-6].

Azerbaijan was involved in the Nagorno-Karabakh conflict under the USSR within the illegal decision dated February 20, 1988, passed by the Council of Nagorno-Karabakh Autonomous Province which was in the content of Azerbaijan SSR then. In September 21, 1988 in former Nagorno Karabakh Autonomous Province was declared state of emergency and curfew.

On January 12, 1989, the Presidium of the Supreme Soviet of the USSR established a "Special Management in Nagorno-Karabakh Autonomous Province" and for the protection of law and order employees of internal affairs bodies of the USSR consisting of 5400 men was involved to this work [2, 20-21]. Despite of all these, since the 90 s the Nagorno-Karabakh conflict has become one of the important reasons for the violation of human rights, and this process continues to this day. Although the grounds of the genocide against the Azerbaijanis have ancient history, but in the 90 s of the 20th century, on the basis of ethnic conflict the first victims, two Azerbaijanis - Bakhtiyar and Ali were killed by Armenian separatists [2, 20-21]. On the eve of this event more than two hundred thousand Azerbaijani were driven out from their permanent residence, from the ancient lands historically belonging to them, the territory called Armenia. On a whole, data of the last years shows that, as a result of military aggression of Armenia against Azerbaijan for more than 20 thousand of Azerbaijanis were killed, 4866 people are missing, and 100 thousand people were wounded, 50 thousand people have received injuries in different areas of the human body. As a result of aggression as well as 17 thousand square kilometers of arable land is under the occupation, 130939 houses in 900 settlements, 2389 industrial and agricultural facilities, 1025 educational, 798 health, 1510 cultural institutions, 5198 kilometres of roads, 348 bridges, 76940 kilometres of power lines, 7568 kilometres of water lines have been destroyed. Despite the UN Security Council had passed resolutions N 822, 853, 874 and 884 on the conflict, however, none of them have not been implemented yet. All these have led to massive violation of the women and children's rights, and this threat continues to this day [9, 52-53].

International law regulates in detail the main elements and implementation mechanisms of human rights protection and defense in the state of conflicts and wars [9, 52-53]. In the years of independence, the normative-legal acts which are necessary in this direction at the national level were adopted, mechanisms were established, researches were conducted and a number of issues brought to light. According to the law when we say "the war time" we shall mean the situation being of the Azerbaijan Republic at war with the foreign country. It is clear that to determine the exact time of the beginning and completion of a war is very important for clarification of the legal facts. In this sense, the declaration of war or the beginning of military operations is considered to be the first day and the first hour of the actual beginning of the war, and the day and the hour of cessation of military operations, in fact, the end of the war. And the "battle conditions" covers the state of standing of the military units directly against the enemy and actually the state of conducting the military operations. No doubt, the concepts "battle conditions" and "the war time" differ significantly from each other. "Battle conditions" may exist not only in war time, even in peace time, with a view to carry out any battle order [3, 231].

In the years of independence the most necessary regulatory and legal framework for extreme conditions -

the martial law, the war situation, the state of emergency and other special situations was established. Each of these documents regulates the issues of regulation, important in the field of providing the separate issues of extreme conditions as well as protection and defense of human rights.

On January 6, 1994, the law of the Republic of Azerbaijan "On the martial law" was adopted. In subsequent years, taking into account the fact that the country was at real war a great deal of normative-legal acts were adopted to determine the legal regimes of "battle conditions," "martial law", "the state of emergency" and the "war situation". All these documents are based on the Constitution of the Republic of Azerbaijan, which was adopted by referendum in 1995. Thus, Article 111 of the Constitution has established the legal basis for the declaration of martial law, Article 112 for implementation of the state of emergency. In the course of making, discussion and adoption of these constitutional norms in full compliance with international standards was observed [8, 545-555].

If some part of the territory of the Azerbaijan Republic is under the actual occupation, foreign government declared war against our country, or when there is danger of armed attack, when the country is in the situation of blockade, then president has the right to declare martial law on the whole territory of the Azerbaijan Republic or in definite territories of it. But the state of emergency can come into operation in cases of violation of the territorial integrity of Azerbaijan Republic, revolt against the state and the start of mass unrest, in cases of natural calamities and other disasters, threats for the security of the country's government and administrative bodies, citizens' lives then president has the right to implement the state of emergency in different areas of the country. The president's decree adopted on such decisions shall be submitted to the legislative body - the Milli Majlis (National Assembly) of the Republic within 24 hours [5, 57-58].

"National Security Conception" approved by the order of the Azerbaijan Republic's President dated May 23, 2007 [6] and "The military doctrine of the Republic of Azerbaijan" [4], approved by the Milli Majlis of the Azerbaijan Republic dated June 8, 2010, has identified for our country which is in a state of war the main directions of state policy in pressing issues. Adoption in the country of such laws "On the preparation for mobilization and the mobilization", "On state of emergency", "On martial law", the establishment of the Ministry of Emergency, as well as the making of legal regulation in connection with all these problems, in accordance with international standards requires more attention to the improvement of the protection and defence of the women and children's rights.

The demands of Geneva Convention "On the protection of war victims" dated August 12, 1949, "On the missing persons" adopted by the 58th session of the UN Commission on Human Rights, as well as the resolutions "On the release of women and children taken hostage during armed conflicts, including those imprisoned then" are being violated by the Republic of Armenia. Thus, Article 27 of the document devoted to the interpretation of the Geneva Convention, provides that besides the general protection of all civilians, the women should be protected in particular from any attempt on their honor as well. This is for their women's dignity, disregarding their national origin, race, religious belief and living, martial and social status. In this sense, the "Declaration on the defence of women and children in emergency situations, during armed conflicts" approved by the UN General Assembly Resolution No 3318 dated December 14, 1974, is of great importance. It is shown there that attacks that cause countless throes for the civilian population, especially the most defenseless share

of it - women and children is strongly prohibited.

Therefore, Article 5 of the Declaration unequivocally considers taking into prison, torture, shooting, mass arrests, collective punishment, repression and all the cruel and inhuman forms of behavior committed against women and children a criminal deed made by the parties of war during military operations or in the occupied territories [9, 110].

The UN General Assembly Vienna Declaration (1993) and its action programme clearly states that the violation of human rights of women in armed conflicts should be assessed as a violation of the basic principles of international law, and the most serious measures should be taken for such actions. This position of the UN General Assembly "Declaration on the elimination of violence against the women" has found reflection in the 1995 Beijing Declaration [9, 110]. Armenian occupation army regularly in inhumane manner violates human rights and freedoms of Azerbaijani citizens recognized by international law.

It becomes clear from the data of the State Commission of the Azerbaijan Republic on Hostages, Prisoners and Missing Persons that at present out of 4211 in the list of persons who were prisoners of war and missing persons as well as taken hostage 256 people were women and 47 were children. Out of 783 people captured 46 were women and 18 were children. As a result of action of the committee more than 1,400 people have been released from captivity, of them 343 were women, 169 were children. 613 people were killed during the Khojaly genocide. Of them 63 were children of tender age, while 106 people were women; 25 children lost both parents and 130 children lost one parent, 8 families were perished completely. At the genocide out of 487 people injured 76 people were children. During these years, out of 350 people blown up by mine 56 children were mine lost and 294 people were wounded... 50 out of 117 people taken hostage during the occupation of Khojavend region, 29 out of 40 people taken hostage during the occupation of Horadiz, 40 people taken hostage during the occupation of the Gorazilli village, 29 old women and children taken hostage in the village of Bashlibel of Kalbajar region were killed immediately and were committed acts of vandalism on their bodies... On some prisoners and hostages' bodies were carried out tortures, experiments and for the purpose of transplantation separate organs were cut off and taken [10, 125-134].

The continuation of the Nagorno-Karabakh conflict today also creates serious problems for the protection and reliable defence of the women and children's rights. International challenges in the field of human rights and freedoms seem very feeble in the context of the tragic events that occur in the region. Armenia is a member of the international community, but in fact demonstratively does not meet its obligations and four known resolutions of the UN.

The killing of our children in Aghdam, Tovuz and other border regions, killing of an Azerbaijani pupil who was a guest from Russia in the result of the explosion of a bomb in the water discharged in a baby toy, or firing of a pupil on his way to school by sniper in the district of Aghdam district are bitter realities of the recent days. Such facts are quite diverse and often-repeated heavy events.

The efforts of international organizations, including the UN, the Red Crescent and Red Cross Committees, the relevant bodies of the OSCE do not give any positive results so far. Despite the cease-fire the Armenian government in fact, is openly continues the war. It seems as if under the veil of a cease-fire deliberately and continuously is carried out the Armenian policy. This has led to the systematic and consistent violations of the women and children's rights. The continuation of such processes that resulted with consistent and serious consequences makes urgent

to take serious measures. I think that publication of these facts that create the view of violation against women and children which lasted for more than twenty years, and their translation into different languages in order to inform the world community is very important. Today, almost everybody speaks about the defence and protection of human rights on international and national level, but in our country the women's and children's rights are violated every day by Armenian separatists.

Great leader Heydar Aliyev in discussions of the Parliament on the state of Nagorno-Karabakh conflict rightly said that we must push the massive, brutal violation of the Azerbaijani people's rights in the foreground, spread and let the world community know it. This is our historical task, the historical duty of every Azerbaijani. Each one should be within the limits of his ability to fulfill this task [1].

National organizations operating in the area of protection of the women and children's rights by accumulation of facts on the war crimes committed by Armenia against women and children which are against peace and humanity, and take measures for trial at the international level. One of such measures is direction them to take measures for proper punishment by showing initiative on the establishment of judicial bodies with special status, by giving the Armenian fascists' deeds to the international tribunal.

The cooperation with international and regional organizations operating in Azerbaijan on the defence of human rights should be increased; a system of measures about each fact should be developed and directly implemented by them. In this case, the inactivity and indifference of international and regional organizations operating in Azerbaijan and in Armenia in the field of protection of the rights of women and children must be seriously brought to notice. The indifference, bureaucracy and indecisiveness in their activity should be discussed and an account should be rendered before the public.

Today, in Azerbaijan and in Armenia the numerous international organizations involved in mission on the conflict. However, despite often repeated, more effective and intensive measures for the return of the prisoners taken hostage, dead bodies of persons killed as a result of the conflict are not implemented. There are serious problems through Armenia's fault in farming in border regions.

Ecology is deliberately marred, forests burned, animals destroyed, the water poisoned, historical monuments are destroyed. On a whole, there are numerous facts about the genocide, slavery, deportation of the population, sexual violence, torture, hiring, violation of laws and customs of war, violation of norms of international humanitarian law, military pillage, robbery and other crimes committed by the Armenian armed forces during the conflict which are against peace and humanity.

The criminal actions committed after the beginning of the conflict and continuing to this day, as well as serious criminal acts committed against women and children with numerous evidences gathered by the investigation organs are proved without any dispute.

Members of the international mission who visit the parties of the conflict freely are feeble to provide solution of even a simple problem. Drugs and narcotics are produced in uncontrolled zones. This fact has repeatedly sounded in the tribune of the United Nations, but the United Nations Office on Drugs and Crimes do not intend to take measures in this regard, they simply re-announcing these facts, consider their duties to be done. Relevant international and regional organizations' inactiveness against the crimes committed in the region, including the acts of infringement on human rights and freedoms is continuing for more than twenty years. This is as a whole, the indifference of international community against the

brutal crimes of the Armenian fascists. All this shows that the time to take measures on establishment of the capable mechanism for the implementation of effective measures in both countries has come. We have the impression that international organizations are not concerned about the delay and deepening of the conflict. But the people's patience gave out.

Today many international organizations are operating in the world. A part of them is engaged in the settlement of various issues of the conflicts prolonged for many years. However, it is clear that only creation of an international organization does not solve the problem. Today, if an organization like the UN is unable to fulfill own decisions, it will affect his reputation, defame it and cast doubt on its activity. In general, the question arises: who have a need to keep at the expense of the member states' millions such an international organization that is not able to implement own decisions? Therefore, now the UN is gradually losing the confidence and hope. However, is there any organization today that will replace it? There are a lot of disturbing questions. But we must find a way out.

There is no doubt, inter-state conflicts and disputes in the period of globalization will increase and deepen. In such a situation, the establishment of operational mechanisms of military or administrative structures for the implementation the decisions of international organizations is the demand of the time. For instance, the time to review the issue of possibility for implementation of such a mission by NATO has already come. Both NATO and the other new structure should be created by joint efforts and mutual agreement of member states, as well as must be provided the legal regulation of its activities and mechanisms. In zones of conflict, as well as in extreme situations, the time to double attention to measures ensuring the protection of the women and children's rights has come. The reality that our country is facing in the context of the Nagorno-Karabakh conflict and the principles of international law demands it. Great sympathy, love and desire of a peace-loving people of Azerbaijan for the protection of the women and children's rights demand this.

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