

# HUMAN RIGHTS PROTECTION

Article



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## Prospects for Increasing the Effectiveness of the Regional System of Human Rights Protection in the Commonwealth of Independent States

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**Abstract:** Based on the analysis of the regional legal acts on the human rights protection in the Commonwealth of Independent States (CIS) the article characterizes the current situation in this field in the context of the reset of the CIS Human Rights Commission activities in October 2022. The authors conduct a comparative legal analysis trying to determine what procedures and mechanisms that proved most effective in the practice of the European Court of Human Rights, the Inter-American Court of Human Rights, the African Court of Human and Peoples' Rights can lay a solid foundation for establishing a CIS Court of Human Rights, and they outline the potential competence of a new court in the future. Key priorities and areas of cooperation between the CIS Member States in light of the task of increasing the effectiveness of a regional human rights protection system are highlighted in the concluding part, namely elaborating the CIS Model Law to enforce the implementation of the CIS Court of Human Rights decisions at the national level including

the creation of compliance monitoring bodies, the appointment criteria and the tenure guarantees for the prospective judges; adopting a new regional treaty on the establishment of the CIS Court of Human Rights to define its competence, jurisdiction, institutional structure, procedural rules, and relationship with the national judicial systems of the CIS Member States; updating regulatory documents that already exists at the CIS level; optimizing the institutional framework to increase the efficiency of the functioning CIS Commission on Human Rights.

**Keywords:** regional system; human rights; Commonwealth of Independent States (CIS); CIS Convention on Human Rights and Fundamental Freedoms of 1995; CIS Human Rights Commission; CIS Court of Human Rights; European Court of Human Rights (ECtHR); Inter-American Court of Human Rights; African Court of Human and Peoples' Rights

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## I. Introduction

The modern international human rights protection system encompasses the activities of States, regional organizations, and the entire international community to ensure the respect, protection, and fulfillment of fundamental human rights and freedoms. This classification

of state obligations in the field of human rights — obligations to respect, protect and fulfill human rights — was first proposed by the British scholar Henry Shue back in 1980 (Shue, 1980), and the human rights bodies of the United Nations (UN) and regional organizations are guided by it to this day.

Changes in the world order caused by increased geopolitical tensions in the international arena, including the pronounced politicization of human rights issues, are accompanied by serious and systematic violations of human rights enshrined in the Universal Declaration of Human Rights of 1948,<sup>1</sup> the UN Charter of 1945,<sup>2</sup> the International Covenant on Civil and Political Rights of 1966,<sup>3</sup> the International Covenant on Economic, Social and Cultural Rights,<sup>4</sup> the CIS Convention on Human Rights and Fundamental Freedoms of 1995 as amended on 14 October 2022 (the CIS Convention)<sup>5</sup> and other international documents.

Researchers have repeatedly noted that the success of human rights efforts at the regional level is more likely than success at the universal level, “A group of States united by a common historical past, the same level of economic development, and common cultural traditions will prefer to compromise sovereignty to a certain extent in favor of an international body set up to identify possible human rights violations” (Elmons, 1989, p. 129). Russia is a Member State of the Eurasian Economic Union (EEU). This is a regional integration association that

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<sup>1</sup> Universal Declaration of Human Rights. United Nations General Assembly Resolution 217 A (III) adopted on 10 December 1948. Available at: [https://docs.un.org/en/A/RES/217\(III\)](https://docs.un.org/en/A/RES/217(III)) [Accessed 01.04.2025].

<sup>2</sup> United Nations Charter adopted on 26 June 1945. Available at: <https://www.un.org/en/about-us/un-charter/full-text> [Accessed 02.04.2025].

<sup>3</sup> The International Covenant on Civil and Political Rights adopted on 16 December 1966. Available at: [https://www.un.org/ru/documents/decl\\_conv/conventions/pactpol.shtml](https://www.un.org/ru/documents/decl_conv/conventions/pactpol.shtml) [Accessed 02.04.2025].

<sup>4</sup> The International Covenant on Economic, Social and Cultural Rights adopted on 16 December 1966. Available at: [https://www.un.org/ru/documents/decl\\_conv/conventions/pactecon.shtml](https://www.un.org/ru/documents/decl_conv/conventions/pactecon.shtml) [Accessed 02.04.2025].

<sup>5</sup> The CIS Convention on Human Rights and Fundamental Freedoms of 1995 (as amended on 14 October 2022). Unified Register of Legal Acts and Other Documents of the Commonwealth of Independent States. Available at: <https://cis.minsk.by/reestr2/doc/451#text> [Accessed 02.04.2025].

includes five states located in Europe and Asia: Armenia, Belarus, Kazakhstan, Kyrgyzstan, and the Russian Federation. The EEU was established in accordance with the Treaty on the Eurasian Economic Union adopted on 29 May 2014.<sup>6</sup>

The idea of the theoretical development and practical implementation of the concept of the Eurasian space in the field of human rights deserves attention. The EAEU has not yet created a program document in the field of human rights and human rights bodies in its structure, although there are expectations of this kind.<sup>7</sup> In the future, the Eurasian Declaration of Human Rights may become a program document in the human rights sphere in the Eurasian space, capable of reflecting the peculiarities of regional understanding of legal processes, which is desirable, in the opinion of many legal scholars from the Eurasian states (for instance, Bainiyazov, 2013), and the Eurasian Court of Human Rights may become the main judicial body in this system (for instance, Busurmanov, 2015). The Eurasian Declaration of Human Rights, even if it was a non-binding document, could become a Eurasian catalog of human rights, which would establish all the main categories of rights reflected in the Universal Bill of Human Rights — civil, political, economic, social, and cultural rights. It will present an opportunity to consolidate the norms that are not yet available in the national legislation of the EEU Member States, so that the Declaration would serve as a guideline, a beacon to achieve.

However, this is a prospect for the distant future. Currently, it seems more likely that the Commonwealth of Independent States will assume the functions of the regional coordinator of human rights efforts. The CIS Member States share a common Soviet past and profess

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<sup>6</sup> The Treaty on the Eurasian Economic Union. Signed in Astana on 29 May 2014. Available at: [https://www.consultant.ru/document/cons\\_doc\\_LAW\\_163855/?ysclid=m903gwmv53245021](https://www.consultant.ru/document/cons_doc_LAW_163855/?ysclid=m903gwmv53245021) [Accessed 02.04.2025].

<sup>7</sup> Speech by the Commissioner for Human Rights in the Russian Federation Tatiana N. Moskalkova at the III International conference “Problems of human rights protection in the Eurasian space: exchange of best practices between ombudsmen.” 17 December 2019 Commissioner for Human Rights in the Russian Federation. Available at: [https://ombudsmanrf.org/news/novosti\\_upolnomochennogo/view/vystuplenie\\_upolnomochennogo\\_na\\_mezhdunarodnoj\\_konferencii\\_po\\_zashhite\\_prav\\_cheloveka\\_na\\_evrazijskom\\_prost](https://ombudsmanrf.org/news/novosti_upolnomochennogo/view/vystuplenie_upolnomochennogo_na_mezhdunarodnoj_konferencii_po_zashhite_prav_cheloveka_na_evrazijskom_prost) [Accessed 16.08.2024].

traditional moral and political values; in addition, they are located in the same geographical region and have largely similar legal systems (Mkhitarian and Mkhitarian, 2017, p. 42). All these factors contribute to a common understanding of the principles of law and are able to form a solid foundation for the functioning of an effective regional human rights protection system within the Commonwealth.

## **II. The Regional Human Rights Protection System in the CIS: the State of Affairs in the Period from 1993 to 2022**

The problems of respecting human rights in the post-Soviet space became particularly acute in connection with Russia's withdrawal from the Council of Europe<sup>8</sup> on 15 March 2022. The Secretary General of the Council of Europe, Marija Pejčinović Burić, was notified of it by a letter from the Minister of Foreign Affairs Sergey V. Lavrov in accordance with Art. 7 of the Statute of the Council of Europe on the right of any Member to withdraw by formally notifying the Secretary General of its intention to do so (such withdrawal should have taken effect at the end of the financial year in which it was notified, i.e., on 1 January 2023).<sup>9</sup> In this letter, Russia also announced its intention to denounce the European Convention on Human Rights (ECHR) in accordance with Art. 58 of the ECHR,<sup>10</sup> which was not possible earlier than on 15 September 2022 (a High Contracting Party may denounce the Convention after six months' notice contained in a notification addressed to the Secretary General of the Council of Europe).

The authors of the present article consider it necessary to explore the possibilities of enhancing the effectiveness of the regional human

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<sup>8</sup> The Statement of the Foreign Ministry of the Russian Federation on the launch of the procedure for its withdrawal from the Council of Europe dated of 15 March 2022. Ministry of Foreign Affairs of the Russian Federation. Available at: [https://www.mid.ru/ru/foreign\\_policy/news/1804379/](https://www.mid.ru/ru/foreign_policy/news/1804379/) [Accessed 01.04.2025].

<sup>9</sup> Statute of the Council of Europe 5 May 1949. Council of Europe. Available at: <https://rm.coe.int/1680306052>, [https://www.mid.ru/ru/foreign\\_policy/news/1804379/](https://www.mid.ru/ru/foreign_policy/news/1804379/) [Accessed 01.04.2025].

<sup>10</sup> European Convention on Human Rights of 4 November 1950. Council of Europe. Available at: <https://www.coe.int/en/web/compass/the-european-convention-on-human-rights-and-its-protocols> [Accessed 01.04.2025].

rights protection system in the CIS, including issues of improving international legal acts and control mechanisms existing in the Commonwealth.

The structure of the regional model of human rights protection in the CIS at the present stage includes the following elements:

- the normative foundations of the human rights protection system that contain the basic principles and establish the legal framework for its functioning, namely the 1995 Convention of the Commonwealth of Independent States (CIS) on Human Rights and Fundamental Freedoms and its Protocol of 14 October 2022;

- the institutional foundations of the system including the CIS Human Rights Commission, operating on the basis of the new Regulations adopted on 14 October 2022 that “resuscitated” the CIS Human Rights Commission, in the figurative words of the President of the Republic of Tajikistan E. Rahmon.<sup>11</sup>

Today the Russian Federation is actively involved in international cooperation in the field of human rights within the CIS (Kryuchkov, 2024, pp. 101–107). At the same time, it should be noted that the CIS Convention on Human Rights and Fundamental Freedoms of 1995 applies only to four Member States of the Commonwealth: on 11 August 1998, it entered into force for the Republic of Belarus, the Russian Federation, and the Republic of Tajikistan, and on 21 August 2003 for the Kyrgyz Republic.<sup>12</sup>

The CIS Convention on Human Rights and Fundamental Freedoms of 1995 codified civil, political, economic, and social rights listed in the 1948 Universal Declaration of Human Rights and in the 1966 International Covenants on Human Rights. Unlike the European Convention for the Protection of Human Rights and Fundamental Freedoms, the CIS Convention explicitly enshrines the right to work and protection from unemployment (Para. 1 Art. 14), contains a very

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<sup>11</sup> The Decision of the CIS Council of Heads of State on the new version of the Regulations on the Human Rights Commission of the Commonwealth of Independent States of 14 December, 2022. Available at: <https://cis.minsk.by/reestr2/doc/6636#text> [Accessed 01.04.2025].

<sup>12</sup> The Executive Committee of the Commonwealth of Independent States. Available at: <https://cis.minsk.by/> [Accessed 01.04.2025].

detailed list of guarantees for the effective exercise of the rights of working women (Para. 2 Art. 14): States undertake to provide working women with a paid leave, sufficient allowances for social security before and after childbirth; consider it illegal to dismiss a woman during her absence due to a maternity leave; provide free time for mothers who breastfeed their infants; regulate at the national level the admission of women to those types of work that are not suitable for them because of the danger, harmfulness to health or severity. The 1995 Convention regulates in detail the right to health protection (Art. 15), the rights to social security and medical care (Art. 16).

The Commonwealth of Independent States Charter of 1993 provided for the establishment of a Human Rights Commission with headquarters in Minsk as an advisory body to the CIS. It was established to monitor the implementation by the Member States of the Commonwealth of their obligations in the field of human rights, to consider applications from States parties to the CIS Convention, as well as individual and collective complaints from any individuals and non-governmental organizations on issues related to human rights violations by any of the participating States. The members of the Commission are appointed by the Member States; currently there are seven of them — representatives of Armenia, Belarus, Kazakhstan, Kyrgyzstan, Russia, Tajikistan, and Uzbekistan.<sup>13</sup>

### **III. Adoption of the New Regulations on the CIS Human Rights Commission in 2022**

The new Regulations on the CIS Human Rights Commission establish the procedure for its formation (two representatives from each State), define the requirements for its members (“high moral qualities and recognized competence in the field of human rights and freedoms, as well as experience in their protection”, four years as the term of office (Para. 1–2)), and also the powers of the Commission (preparation of thematic reports on topical issues of the promotion and protection of human rights and freedoms in the CIS (Para. 12), consideration of national reports on the promotion and protection of

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<sup>13</sup> The CIS Internet portal. Available at: <https://e-cis.info/cooperation/3850/105640/?ysclid=m8zvgtgw8973014274> [Accessed 01.04.2025].

human rights and freedoms and issuing an advisory opinion and, if necessary, recommendations to the State based on its results (Para. 13), interaction with interested national authorities and human rights institutions on the organization of forums, academic and practical conferences, seminars on the exchange of experience in the field of promotion and protection of human rights and freedoms (Para. 14), as well as consideration of interstate and/or individual complaints from individuals on possible human rights violations, if the State has recognized the expanded competence of the Commission in accordance with its national legislation and sent a notification to the CIS Executive Committee (Para. 15)). The issue of other regional bodies that can assist the CIS Human Rights Commission in ensuring respect for human rights in the CIS area is also of interest.

In 2001, the Parliamentary Assembly of the Council of Europe adopted Resolution 1249 “On the compatibility of the Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States and the European Convention on Human Rights”.<sup>14</sup> The Parliamentary Assembly recommended in the resolution that the Member States of the Council of Europe should not enter into the 1995 Convention pointing out that the CIS Convention could jeopardize the effective exercise of the right to file individual complaints with the European Court of Human Rights (ECtHR) (Para. 3).

Recommendation 1249 questioned the impartiality and competence of the CIS Commission on Human Rights pointing out that its recommendations do not have the same coercive nature as the judgments of the ECtHR (Para. 4). At the same time, States that had ratified the CIS Convention on Human Rights were invited to make a statement confirming that the procedure provided for by the European Convention on Human Rights would not be replaced by resorting to the procedure provided for by the CIS Convention on Human Rights (Para. 6.2).

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<sup>14</sup> Rec. 1249 “Co-existence of the Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States and the European Convention on Human Rights”, Parliamentary Assembly, May 2001, Standing Committee. Available at: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16916&lang=en> [Accessed 02.04.2025].



To what extent does the criticism of the Parliamentary Assembly of the Council of Europe correspond to reality? On 14 October 2022, new Regulations on the CIS Commission on Human Rights were approved, amendments were made to the CIS Convention on Human Rights and Fundamental Freedoms of 1995 and on 29 November 2023, the first meeting of the CIS Commission on Human Rights was held on the basis of the updated document.

The CIS Human Rights Commission was given the following powers:<sup>15</sup>

- in the field of monitoring the fulfillment of human rights obligations, the Commission acts as an advisory body;

- the Commission develops thematic reports — analytical documents on topical issues of human rights protection that are advisory in nature and may contain proposals for improving the legislation of the CIS countries in the established field. Thus, the Commission has developed a report on the analysis of normative legal acts in the field of migrants' rights in the Member States of the CIS and prepared an overview of the experience of the Member States of the CIS Commission on Human Rights in legally ensuring the safety of the physical, psychological and moral development of the younger generation when using information posted in the Internet;

- the CIS Member States submit their national reports on the implementation of their convention obligations in the field of human rights, and the Commission issues advisory opinions and recommendations on them;

- the Commission cooperates with international and national bodies, in particular, it cooperates with human rights institutions of the CIS countries, organizes forums, conferences and seminars on the exchange of experience;

- the Commission may receive applications from States and individuals regarding possible human rights violations if the relevant States have recognized its competence in this matter in accordance

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<sup>15</sup> On the new version of the Regulations on the Human Rights Commission of the Commonwealth of Independent States: decision of the CIS Heads of State of 14 October 2022. Official website of the Commonwealth of Independent States. Available at: <http://cis.minsk.by/reestr2/doc/6636#text> [Accessed 02.04.2025].

with Para. 15 of the Commission's Regulations.<sup>16</sup> In other words, if its expanded competence is voluntarily recognized by the Member States, the Commission acquires the right to consider interstate complaints from States parties to the 1995 Convention and individual complaints (from any individuals and non-governmental organizations) on issues related to human rights violations by any of the participating States (Art. 15 of the Regulations on the CIS Human Rights Commission).

The Commission's decisions are advisory in nature (Art. 7 of the Regulations on the CIS Human Rights Commission). The updated Regulations also stipulate that the Commission submits an annual report on its activities to the Council of CIS Heads of State. To date, three reports on the activities of the Commission in 2023–2025 have been published (an annual report for the 2023–2024 period and two thematic reports, namely on the rights of migrants in the CIS countries and on the safety of the physical, psychological and moral development of the younger generation when using information posted in the Internet) as well as a number of documents describing the topics of the meetings held by the Commission.<sup>17</sup>

The Commission can play an increasingly active role in developing cooperation in the field of human rights protection at the CIS level. It would be useful to consider possible changes in its terms of reference. The following five key areas are crucial for strengthening the Commission's powers.

*1. Making the Commission's decisions binding*

Currently, the Commission's decisions are non-binding, which reduces their importance for the Member States. Strengthening the Commission's powers could include a mechanism for a mandatory study of its conclusions by state bodies of the CIS Member States, as well as the introduction of a monitoring system for their implementation.

*2. Expanding the competence to review complaints*

The Commission can consider complaints from individuals only if this aspect of its competence is recognized by specific States. To ensure

<sup>16</sup> The Decision of the Council of CIS Heads of State "On the new version of the Regulations on the Human Rights Commission of the Commonwealth of Independent States" (Adopted in Astana on 14 October 2022). Unified Register of Legal Acts and other Documents of the CIS. Available at: <http://cis.minsk.by/> [Accessed 02.04.2025].

<sup>17</sup> The CIS Internet portal. Available at: <https://e-cis.info/cooperation/3905/> [Accessed 01.06.2025].

a generally recognized mechanism for the protection of human rights in the CIS, it is necessary to empower the Commission to consider individual complaints regardless of the position of individual States,<sup>18</sup> as well as to introduce clear procedural rules for their consideration. Currently, Armenia and Tajikistan have made reservations indicating that they do not recognize the competence of the CIS Human Rights Commission in terms of its right to consider interstate and individual complaints.

Despite the proclaimed commitment to the ideals of human rights protection, it should be noted that the reservations expressed by Armenia and Tajikistan regarding the powers of the CIS Commission on Human Rights attest to the systemic limitations inherent in the human rights protection mechanism within the CIS framework. This stance reflects the traditional, sovereignty-centric approach characteristic of post-Soviet states, prioritizing the inviolability of state sovereignty in matters pertaining to human rights.

*3. Creating a mechanism to impose restrictive measures for human rights violations*

One of the factors limiting the Commission's influence is the lack of legal measures to influence States that violate human rights. A possible solution could be the development of a sanction mechanism within the CIS, providing, for example, a temporary suspension of the membership of the offending State in the Commission.

*4. Strengthening the independence and transparency of the Commission's work*

Now, the Commission is formed exclusively from official representatives of the Member States; however, it is advisable to provide for the possibility for representatives of national parliaments and civil society to participate in its work.

*5. Expanding international cooperation*

Effective protection of human rights is impossible without cooperation with international institutions. It is necessary to strengthen

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<sup>18</sup> Reservations by individual Member States (for example, Armenia and Tajikistan) regarding the competence of the Commission in considering interstate and individual complaints emphasize that not all CIS States are ready to give it a broad mandate to protect human rights in this area.

the Commission's ties, based on the importance of avoiding politicization of human rights. In this regard, it is possible to create advisory councils and/or working groups jointly with the United Nations, as well as cooperation with national human rights commissioners (ombudsmen).

According to the assessment of the Parliamentary Assembly of the Council of Europe (PACE), the level of protection provided by the CIS Convention for the Protection of the Rights and Fundamental Freedoms was lower than the standards of the European Convention on Human Rights (ECHR).<sup>19</sup> It concerned both the substantive aspects of the CIS Convention and the institutional mechanisms for monitoring its implementation.

The experts noted that the body responsible for ensuring the compliance with the provisions of the Convention within the CIS did not have the necessary degree of impartiality and objectivity typical of the European Court of Human Rights. In addition, according to the PACE, the decisions on human rights issues adopted within the framework of the Commonwealth did not have the same legal force as the judgments of the ECtHR, since their enforcement was not ensured by similar enforcement mechanisms.

However, one cannot help but notice that there was a clear trend towards the politicization of processing Russian complaints in the ECtHR, which was repeatedly pointed out by the President of the Russian Federation Vladimir Putin.<sup>20</sup> For instance, out of 840 complaints filed with the ECtHR by residents of Donbass, the Court did not consider a single one. Such an approach raised questions. Subsequently, the Decision on the cessation of the membership of the Russian Federation to the Council of Europe on 16 March 2022<sup>21</sup> did not comply with the

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<sup>19</sup> Rec. 1249 "Co-existence of the Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States and the European Convention on Human Rights," Parliamentary Assembly, Standing Committee, May 2001. Available at: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16916&lang=en> [Accessed 02.04.2025].

<sup>20</sup> TASS News Agency. Available at: <https://tass.ru/obschestvo/17046505> [Accessed 02.04.2025].

<sup>21</sup> Council of Europe CM/Res(2022)2, 16 March 2022. Available at: [https://search.coe.int/cm/#{%22CoEIdentifier%22:\[%220900001680a5d7d9%22\],%22sort%22:\[%22CoEValidationDate%20Descending%22\]}](https://search.coe.int/cm/#{%22CoEIdentifier%22:[%220900001680a5d7d9%22],%22sort%22:[%22CoEValidationDate%20Descending%22]}) [Accessed 02.04.2025].

timeframe stipulated by the European Convention on Human Rights. The Decision relied on Art. 8 of the Statute of the Council of Europe, which permits the expulsion of a Member for serious violations. However, the European Convention on Human Rights does not provide for a procedure of expulsion, only voluntary withdrawal after six months' notice contained in the notification addressed to the Secretary General is possible under Art. 58(1) of the ECHR. This situation testifies to the fact that procedural guarantees enshrined in the European Convention were sacrificed in favor of a political decision.

Current situation with ensuring the observance of human rights in the CIS creates prerequisites for the search for alternative legal mechanisms. In this context, a judicial body within the Commonwealth, based on common legal principles, cultural and historical proximity of the Member States and similar socio-cultural guidelines, has the potential to build the trust of citizens. Such an institutional body, unlike the ECtHR, can become a more organic instrument for the protection of rights, corresponding to the regional peculiarities of cooperation between the Commonwealth countries.

According to Armen K. Antonyan (2024, pp. 15–21), Alla A. Chechulina (2023, pp. 39–45), Aygul S. Khisamova and Irina A. Akhmadullina (2020, pp. 376–378), the establishment of the CIS Court of Human Rights should become a guarantor of strengthening the existing system of protection of human rights and freedoms in the CIS countries, and contribute to ensuring their respect at the state level.

According to the current discussions, the projects for establishing the CIS Court of Human Rights are not focused on replacing the European system, but rather on creating a parallel protection mechanism. The proposed concepts emphasize that the future institution will complement the existing administrative and judicial bodies functioning to protect human rights at the national level. Thus, citizens of States participating in both the European system and the human rights protection system at the CIS level will have the opportunity to choose which international judicial institution to apply to in order to restore violated rights. According to some researchers, in the future the CIS Court of Human Rights will be able to take into account the legal positions of other

regional human rights courts in its judgments, including the ECtHR, in order to implement the principle of humanism (Solovyov, 2019, p. 267).

It should be noted that the acceleration of the process of creating a regional court as a structure parallel to the ECtHR is fraught with significant risks. To minimize negative consequences, it is necessary to clearly define the competence and jurisdiction of such an institution, as well as to determine the place of its future judgments in the system of sources of national law of the States parties to the 1995 Convention.

#### **IV. The CIS Court of Human Rights and Its Possible Competence in the Future**

The idea of establishing the CIS Court of Human Rights has not yet been realized, but it seems to be a more realistic and less ambitious idea than creating the Eurasian Court of Human Rights at the current stage of regional integration.

For CIS States that emerged from the USSR and view their national sovereignty as a value of paramount importance, this project may raise significant concerns. Any regional court decision contradicting the interests of national leadership may be perceived as a threat to domestic stability or an interference in state affairs. Moreover, establishing an effective regional court requires a developed administrative infrastructure, qualified judges capable of adjudicating complex interstate disputes, and sustained funding. Currently, such investments are not a priority for most CIS countries.

Nevertheless, despite these political and legal challenges, the creation of a human rights judicial body within the CIS framework offers several long-term advantages. First, a regional court could ensure uniform interpretation and application of norms adopted under the CIS human rights treaties, which is crucial given the diversity of legal systems among Member States and the inconsistency of their domestic judicial practices in the realm of human rights protection.

Second, a regional dispute-resolution mechanism enhances predictability and transparency in the legal environment. In contexts where national courts often exhibit dependence on the executive branch, limited competence in international law, or low public trust, a regional

court could serve as a neutral arbiter, guaranteeing fair adjudication of interstate disputes and individual human rights complaints.

Third, the establishment of a new Commonwealth court will help to institutionalize the rule of law at the level of regional cooperation. It will promote the unification of human rights standards and encourage Member States to bring their national legislation and judicial practices in line with the unified norms in the human rights sphere. Thus, rather than replacing the need for domestic reforms, a regional court will act as a catalyst, providing an external normative framework and monitoring compliance.

Finally, a regional court could serve as an additional safeguard for the rights and legitimate interests of private individuals, particularly when domestic judicial mechanisms prove ineffective or politically compromised. Provided its jurisdiction extends to considering interstate cases and individual applications, such a court could fulfill human rights functions analogous to that of the European Court of Human Rights, but within the post-Soviet regional context.

Academic publications of recent years (Gligich-Zolotareva, 2023, pp. 126–139; Kleandrov, 2023, pp. 12–22; Klimovskaya, 2024, pp. 123–128) emphasize that such a judicial institution should be guided by the principles of political independence, efficiency, objectivity, and impartiality. In this regard, the possible competence of the CIS Court of Human Rights should be outlined as follows.

*1. Resolving interstate disputes in the field of human rights*

The competence of the CIS Court of Human Rights in resolving interstate disputes may be limited to issues related to the interpretation and application of the provisions of the Convention for the Protection of Human Rights in the CIS (interstate cases by analogy with Art. 33 of the European Convention on Human Rights).<sup>22</sup> At the same time, the jurisdiction of the CIS Court of Human Rights regarding the

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<sup>22</sup> Convention for the Protection of Human Rights and Fundamental Freedoms (Concluded in Rome on 04.11.1950), together with “Protocol No. 1 (Signed in Paris on 20.03.1952), Protocol No. 4 on ensuring certain rights and freedoms in addition to those already included in the Convention and the First Protocol thereto (Signed in Strasbourg on 16.09.1963), Protocol No. 7 (Signed in Strasbourg on 22.11.1984)). Collection of Legislation of the Russian Federation, 08.01.2001, No. 2, Art. 163, Bulletin of International Treaties, No. 3, 2001.

consideration of interstate complaints could be optional and would depend on the recognition of the States participating in the CIS Convention on Human Rights and the availability of a corresponding statement on the recognition of such jurisdiction (by analogy with Art. 62 of the Inter-American Convention on Human Rights).<sup>23</sup>

It is also possible to define a pre-trial procedure for considering interstate disputes. Any State party that believes that another State party violated the provisions of the CIS Convention on Human Rights may have the opportunity to draw its attention to such a violation in writing and request explanations (by analogy with Art. 47 of the African Charter on Human and Peoples' Rights).<sup>24</sup>

## *2. Considering individual complaints*

In our opinion, when filing an individual complaint, by analogy with the procedure of applying to the ECtHR established in Art. 35 of the European Convention,<sup>25</sup> the applicant must comply with the necessary conditions of admissibility, namely he/ she should exhaust domestic remedies, comply with the established deadline (currently in the European system a deadline of four months is set from the date of the last decision at the national level), demonstrate the existence of a significant disadvantage (a similar requirement of a "significant disadvantage" exists in the practice of the Inter-American Court on Human Rights).<sup>26</sup> In addition, an individual complaint should not

<sup>23</sup> Inter-American Convention on Human Rights (Pact of San José de Costa Rica, 22 November 1969). Available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%201144/volume-1144-I-17955-English.pdf> [Accessed 07.04.2025].

<sup>24</sup> African (Banjul) Charter on Human and Peoples' Rights (Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982). Available at: <https://www.african-court.org/wpafc/wp-content/uploads/2020/04/AFRICAN-BANJUL-CHARTER-ON-HUMAN-AND-PEOPLES-RIGHTS.pdf> [Accessed 07.04.2025].

<sup>25</sup> Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 04.11.1950). Available at: [https://www.echr.coe.int/documents/d/echr/convention\\_ENG](https://www.echr.coe.int/documents/d/echr/convention_ENG) [Accessed 07.04.2025].

<sup>26</sup> For example, in *Gonzales Lluy v. Ecuador* (2015) the Inter-American Court recognized the violation of the applicant's rights due to the HIV infection in the hospital, pointing out to a "significant disadvantage". *Corte Interamericana de Derechos Humanos. Gonzales Lluy y otros v. Ecuador. Excepciones Preliminares, Fondo, Reparaciones y Costas. Sentencia de 1 de septiembre de 2015. Serie C No. 298*. Available at: <https://jurisprudencia.corteidh.or.cr/es/vid/883975808> [Accessed 01.06.2025].



be anonymous, similar to one that has already been considered by a Court, as well as it should not be the subject of parallel proceedings before another international body, incompatible with the provisions of the CIS Convention, manifestly ill-founded, an abuse of the right to file an individual complaint. To prevent an avalanche of cases, it is proposed to introduce preliminary filters, for example, a requirement for a minimum degree of violation.

It should be noted that in the case of *Gonzales Lluy v. Ecuador*,<sup>27</sup> despite the existence of pending domestic proceedings, the Court declared the complaint admissible by applying the principle of effectiveness of legal remedies. The Court emphasized that although the applicant had not formally exhausted all available domestic remedies, such remedies could not be considered effective or accessible within a reasonable timeframe, particularly given the protracted nature of the proceedings and the applicant's vulnerable status due to her serious medical condition (HIV). This decision established an important precedent for flexible interpretation of the exhaustion of domestic remedies requirement, prioritizing substantive access to justice over formal procedural compliance. By contrast, the CIS countries lack the concept of an "effective remedy" within their domestic legal cultures. Unlike the precedent-based system of the ECtHR which has developed this doctrine through its jurisprudence, post-Soviet States typically maintain a rigid formalistic approach to the exhaustion rule without considering the practical availability or effectiveness of domestic legal mechanisms.

Initially, the European human rights protection system included three bodies such as the European Commission on Human Rights, the European Court of Human Rights (ECtHR) and the Committee of Ministers of the Council of Europe with the powers to oversee the implementation of ECtHR judgments by participating States. The European Commission on Human Rights acted as a filter, deciding on the admissibility of individual complaints, and it was abolished by Protocol No. 11 to the ECHR that entered into force in 1998. Most probably, at a first stage, the CIS Human Rights Commission could also

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<sup>27</sup> *Gonzales Lluy y otros v. Ecuador*. Para. 25.

act as a body capable of rejecting those individual complaints that it deems inadmissible for consideration on the merits by the Court.

Since 2006, the ECtHR has been using the pilot judgment procedure. It serves the interests of the Court, States parties to the ECHR and the applicants. With the use of this procedure States gain “a serious incentive to begin to take effective measures aimed at eliminating at the national level the systemic problem that leads to an increase in the number of clone complaints filed with the ECtHR” (Abashidze, 2012, p. 87). This experience of the ECtHR may be taken into account in the future in the activities of the CIS Court of Human Rights, too, when it faces a similar issue, namely the need to eliminate structural problems in the national legislation of the Member States, leading to an emergence of individual complaints of one and the same type.

### *3. Issuing advisory opinions*

This power of the CIS Court of Human Rights will ensure the strengthening of the dialogue between the CIS Court and the supreme courts of the States parties to the 1995 Convention. The latter will be able to turn to the CIS Court of Human Rights and request advisory opinions on the interpretation of the CIS Convention norms in order to eliminate contradictions in the application of regional law of human rights. This power was granted to the ECtHR as a result of the adoption of Protocol No. 16 to the ECHR in 2013 (Art. 1 of the Protocol 16).<sup>28</sup> The experience of the African Court of Human and Peoples’ Rights should also be taken into consideration. It combines the functions of resolving interstate disputes, considering individual complaints and giving advisory opinions.<sup>29</sup>

The practice of issuing advisory opinions will help to resolve legal conflicts between the CIS Convention on Human Rights and various

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<sup>28</sup> Council of Europe. Available at: [https://www.echr.coe.int/documents/d/echr/protocol\\_16\\_eng](https://www.echr.coe.int/documents/d/echr/protocol_16_eng) [Accessed 07.04.2025].

<sup>29</sup> Protocol to the African Charter on Human and People’s Rights on the Establishment of the African Court on Human and People’s Rights (OAU Doc. OAU/LEG/EXP/AFCHPR/PROT (III) of 9 June 1998). Available at: <https://www.african-court.org/wpafc/wp-content/uploads/2020/10/2-PROTOCOL-TO-THE-AFRICAN-CHARTER-ON-HUMAN-AND-PEOPLES-RIGHTS-ON-THE-ESTABLISHMENT-OF-AN-AFRICAN-COURT-ON-HUMAN-AND-PEOPLES-RIGHTS.pdf> [Accessed 07.04.2025].

interpretations of human rights in the Commonwealth States. It can be expected that the Court exercising this power will have the right to recommend changes in domestic law in case it contradicts the CIS Convention of 1995.<sup>30</sup>

The establishment of a Human Rights Court in the CIS requires taking into account the unique socio-legal, cultural and political features of the post-Soviet space. These features differ from those that exist in other regional systems of human rights protection represented by such courts as the ECtHR, the Inter-American Court or the African Court of Human and Peoples' Rights. The CIS countries face common socio-economic challenges, such as labor migration, for instance. In our opinion, the jurisdiction of the CIS Court of Human Rights may include the resolution of such cases as a specialized procedure.

The Commissioner for Human Rights in the Russian Federation Tatiana N. Moskalkova who was elected the Head of the CIS Human Rights Commission in November 2023, believes that the new Human Rights Court authorized to operate in the Eurasian space could be based on a regional document that would be integrated into the CIS system.<sup>31</sup>

The structural distinctions of the proposed CIS Human Rights Court will lie in its expanded jurisdiction, institutional independence, and its interaction with the supreme courts of the CIS Member States. The institutional foundations of the CIS Court of Human Rights could be defined in a specific regional treaty. Such a document should clearly describe the competence (adjudication of both interstate disputes and individual complaints, issuance of pilot judgments to address systemic human rights violations, legally binding interpretation of the CIS Human Rights Convention provisions) as well as its jurisdiction of the Court (examination of alleged human rights violations occurring within Member States of the Commonwealth of Independent States,

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<sup>30</sup> For example, in 2009, the Ugandan Supreme Court ruled that laws on the death penalty contradict the African Charter on Human and Peoples' Rights. *Attorney-General v. Susan Kigula & 417 Others*. Constitutional Appeal 03 of 2006 (judgment of 21 January 2009, unreported). Available at: <https://www.globalhealthrights.org/wp-content/uploads/2013/02/SC-2009-Attorney-General-v.-Susan-Kigula-and-417-Ors.-.pdf> [Accessed 07.04.2025].

<sup>31</sup> TASS News Agency. Available at: <https://tass.ru/obschestvo/10915583> [Accessed 07.04.2025].

and authoritative determination regarding the conformity of domestic legal provisions with the fundamental standards established under the CIS Human Rights Convention), establish procedures for interaction with supreme national courts (requests for authoritative interpretation of the CIS Human Rights Convention), determine the enforcement mechanisms (establishing a binding legal force to the Court's rulings through the explicit amendments to the CIS Human Rights Convention, creating specialized compliance control bodies, publishing regular state compliance reports) for implementing its judgments and advisory opinions at the national level, reflecting best practices developed overtime in the work of the ECtHR, Inter-American Court of Human Rights and the African Court of Human and Peoples' Rights.

## **V. Conclusion**

The analysis carried out in the present article suggests that the human rights protection mechanism operating within the CIS is at the stage of its formation. The reform of the regional human rights protection system within the CIS should take into account the specifics of the political and legal development of the participating States and should be carried out step-by-step the way it was done in the European, Inter-American, and African systems.

Among the key priorities for its further development, the following areas of cooperation between the CIS Member States should be mentioned:

- elaborating the CIS Model Law to cover the following core issues: the institutional foundations of the CIS Human Rights Court, its jurisdictional parameters, procedures and mechanisms to enforce the implementation of judicial decisions at the national level including the creation of compliance monitoring bodies, and the appointment criteria and the tenure guarantees for the prospective judges;

- adopting a new regional treaty on the establishment of the CIS Court of Human Rights to establish clearly its competence, jurisdictional parameters, institutional structure, procedural rules, and relationship with national judicial systems and bringing the national legislation of

the Member States in line with it to address issues of implementing its decisions at the national level;

- updating regulatory documents, i.e., improving both domestic legal acts and model legislation in the field of human rights that exists at the CIS level (in particular, introducing amendments to the Model Law “On the Status of the Commissioner for Human Rights in the CIS countries”;

- optimizing the institutional framework to increase the efficiency of the functioning bodies in the realm of human rights protection (namely, the CIS Commission on Human Rights).

The gradual strengthening of the role of the CIS Human Rights Commission can include reviewing both interstate and individual complaints on a voluntary basis by means of the special recognition of this power by the Member States. The success of the reform depends on the effectiveness, impartiality, and professionalism of the Commission.

Expanding the competence of the CIS Commission on Human Rights will eventually set the basis for establishing the CIS Court of Human Rights, the next pivotal milestone in creating the necessary institutional foundations for the CIS system of human rights protection. The launch of the CIS Human Rights Court will, in its turn, involve the need to resolve an array of legal and organizational challenges that require a detailed study by the Commonwealth States. They will have to implement a multifaceted program of measures aimed at building the effective interaction with the judicial institution soon to be created within the CIS.

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